

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:  
THE ROMAN CATHOLIC DIOCESE OF  
ROCKVILLE CENTRE, NEW YORK,  
Debtor.

Chapter 11

Case No. 20-12345 (SCC)

**DECLARATION OF JAMES I. STANG, ESQ.**

Pursuant to 28 U.S.C. § 1746, I, James I. Stang, hereby submit this declaration (the “**Declaration**”) under penalty of perjury:

1. I am partner at the law firm of Pachulski Stang Ziehl & Jones LLP (“**PSZJ**”) with an office at 780 Third Avenue, 36<sup>th</sup> Floor, New York, NY 10017. I am duly admitted to practice law in State of California and the United States District Courts for the Southern, Eastern, Central, and Northern Districts of California.

2. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein. If called as a witness, I would testify as to those facts.

3. The Court has approved PSZJ’s employment as counsel to the Official Committee of Unsecured Creditors (the “**Committee**”) in The Roman Catholic Diocese of Rockville Centre, New York (the “**Diocese**” or the “**Debtor**”) in the above-captioned case (the “**Case**”) [Docket No. 163].

4. I submit this Declaration in support of the *Motion of the Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examinations and Production of Documents* (the “**Motion**”),<sup>1</sup> filed concurrently herewith.

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings and definitions ascribed to them in the Motion.

5. Attached hereto at **Exhibit A** is a true and correct copy of the transcript of the November 18, 2020 hearing in this case.

6. Attached hereto at **Exhibit B** is a true and correct copy of an e-mail sent by Karen B. Dine to counsel for the Diocese on November 17, 2020 conveying the Committee's proposed document requests.

7. Attached hereto at **Exhibit C** is a true and correct copy of a letter I sent to Peter Feldman on November 19, 2020 requesting a copy of the IAC Report.

8. Attached hereto at **Exhibit D** is a true and correct copy of an e-mail from Peter Feldman to me sent on November 20, 2020 deferring to the Diocese regarding production of the IAC Report.

9. Attached hereto at **Exhibit E** is a true and correct copy of a letter I sent to Corinne Ball on November 23, 2020 requesting a copy of the IAC Report.

10. I never received a written response from the Diocese to my November 20, 2020 letter, but was told in phone conversations that the Diocese would not produce the IAC Report.

11. The Committee has received no additional information regarding the IAC's work or the underlying transfers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. I executed this Declaration on February 12, 2020 at Santa Monica, CA.

/s/ James I. Stang  
James I. Stang, Esq.

# **EXHIBIT A**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-12345-scc

4 - - - - - x

5 In the Matter of:

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7 THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 20-01226-scc

12 - - - - - x

13 THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

14 Plaintiff,

15 v.

16 ARK 320 DOE, et al.,

17 Defendants.

18 - - - - - x

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| <p>1 Adv. Case No. 20-01227-scc</p> <p>2 ----- x</p> <p>3 THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,</p> <p>4 Plaintiff,</p> <p>5 v.</p> <p>6 ARROWOOD INDEMNITY COMPANY, et al.,</p> <p>7 Defendants.</p> <p>8 ----- x</p> <p>9</p> <p>10</p> <p>11 United States Bankruptcy Court</p> <p>12 One Bowling Green</p> <p>13 New York, NY 10004</p> <p>14</p> <p>15 November 18, 2020</p> <p>16 11:02 AM</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 B E F O R E :</p> <p>22 HON SHELLEY C. CHAPMAN</p> <p>23 U.S. BANKRUPTCY JUDGE</p> <p>24</p> <p>25 ECRO: UNKNOWN</p>   | <p>1 A P P E A R A N C E S :</p> <p>2</p> <p>3 JONES DAY LLP</p> <p>4 Attorneys for the Debtor</p> <p>5 250 Vesey Street</p> <p>6 New York, NY 10281</p> <p>7</p> <p>8 BY: CHRISTOPHER DIPOMPEO (TELEPHONICALLY)</p> <p>9 CORINNE BALL (TELEPHONICALLY)</p> <p>10 BENJAMIN ROSENBLUM (TELEPHONICALLY)</p> <p>11 TODD R. GEREMIA (TELEPHONICALLY)</p> <p>12 ERIC P. STEPHENS (TELEPHONICALLY)</p> <p>13 ANDREW BUTLER (TELEPHONICALLY)</p> <p>14 BENJAMIN THOMPSON (TELEPHONICALLY)</p> <p>15</p> <p>16 PACHULSKI STANG ZIEHL &amp; JONES LLP</p> <p>17 Attorneys for the Committee of Unsecured Creditors</p> <p>18 780 Third Avenue, 34th Floor</p> <p>19 New York, NY 10017</p> <p>20</p> <p>21 BY: JAMES STANG (TELEPHONICALLY)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| Page 3  | Page 5   |
| <p>1 HEARING re Doc #60 Application to Employ Otterbourg P.C. as</p> <p>2 Counsel to the Independent Advisory Committee</p> <p>3</p> <p>4 HEARING re Doc #61 Application to Employ Goldin, A Teneo</p> <p>5 Company as Financial Advisor to the Independent Advisory</p> <p>6 Committee</p> <p>7</p> <p>8 Adversary proceeding: 20-01226-scc The Roman Catholic</p> <p>9 Diocese Of Rockville Centre v. ARK 320 DOE, et al.,</p> <p>10 Pre-trial Conference</p> <p>11</p> <p>12 Adversary proceeding: 20-01227-scc The Roman Catholic</p> <p>13 Diocese Of Rockville Centre v. Arrowood Indemnity Company,</p> <p>14 et al</p> <p>15 Pre-trial Conference</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Transcribed by: Sonya Ledanski Hyde</p> | <p>1 REED SMITH LLP</p> <p>2 Special Insurance Counsel</p> <p>3 599 Lexington Avenue</p> <p>4 New York, NY 10022</p> <p>5</p> <p>6 BY: JOHN BERRINGER (TELEPHONICALLY)</p> <p>7</p> <p>8 COUGHLIN DUFFY</p> <p>9 Attorneys for Arrowood</p> <p>10 350 Mount Kemble Avenue</p> <p>11 Morristown, NJ 07962</p> <p>12</p> <p>13 BY: KEVIN COUGHLIN (TELEPHONICALLY)</p> <p>14</p> <p>15 CLYDE &amp; CO</p> <p>16 Attorneys for Lloyd's London &amp; London Market Companies</p> <p>17 55 W. Monroe</p> <p>18 Chicago, IL 60603</p> <p>19</p> <p>20 BY: CATHY SUGAYAN (TELEPHONICALLY)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |

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| <p style="text-align: right;">Page 6</p> <p>1 OTTERBOURG PC</p> <p>2 Proposed Counsel to the Independent Advisory Committee</p> <p>3 230 Park Avenue</p> <p>4 New York, NY 10169</p> <p>5</p> <p>6 BY: PETER FELDMAN (TELEPHONICALLY)</p> <p>7</p> <p>8 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>9 Attorneys for the U.S. Trustee</p> <p>10 201 Varick Street, Suite 1006</p> <p>11 New York, NY 10014</p> <p>12</p> <p>13 BY: GREG ZIPES</p> <p>14</p> <p>15 ALSO PRESENT TELEPHONICALLY:</p> <p>16</p> <p>17 KAREN MORIARTY</p> <p>18 LEANDER JAMES</p> <p>19 JOSHUA WEINSTOCK</p> <p>20 ARTHUR GONZALEZ</p> <p>21 BRENDA ADRIAN</p> <p>22 ILAN SCHARF</p> <p>23 HARRIS J. GOLDIN</p> <p>24 CHARLES JONES</p> <p>25 JEFF ANDERSON</p> | <p style="text-align: right;">Page 8</p> <p>1 JEFF KAHANE</p> <p>2 SHARA CORNELL</p> <p>3 THOMAS SLOME</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |
| <p style="text-align: right;">Page 7</p> <p>1 MELANIE CYGANOWSKI</p> <p>2 JENNIFER FEENEY</p> <p>3 TRUSHA GOFFE</p> <p>4 PATRICK STONEKING</p> <p>5 JAMES MOFFITT</p> <p>6 MATIN BUNIN</p> <p>7 JILLIAN DENNEHY</p> <p>8 LAUREN LIFLAND</p> <p>9 BRENDA HARKAVY</p> <p>10 JARED BORRIELLO</p> <p>11 ANDREW BUTLER</p> <p>12 ANDREW CIRIELLO</p> <p>13 MICKEE HENNESSY</p> <p>14 WARREN MARTIN</p> <p>15 BRETT MOORE</p> <p>16 CHARLES MOORE</p> <p>17 BENJAMIN ROSENBLUM</p> <p>18 AMANDA TERSIGNI</p> <p>19 BENJAMIN THOMSON</p> <p>20 BRITTANY MICHAEL</p> <p>21 GEORGE CALHOUN</p> <p>22 PETER MCNAMARA</p> <p>23 ELIZABETH CATE</p> <p>24 KAREN DINE</p> <p>25 FRANK OSWALD</p>   | <p style="text-align: right;">Page 9</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT: Good morning, everyone. This Judge</p> <p>3 Chapman. We're here this morning for a hearing in the case</p> <p>4 of the Roman Catholic Diocese of Rockville Centre, case</p> <p>5 number 20-12345. This hearing is being conducted entirely</p> <p>6 telephonically via the Court Solutions platform. A</p> <p>7 recording is being made of the proceedings. No individual</p> <p>8 or private recordings are permitted.</p> <p>9 I have a lengthy roster of those who have signed</p> <p>10 up to participate this morning. Please identify yourself</p> <p>11 for the record when you speak and identify the party on</p> <p>12 whose behalf you are appearing and please do so each time</p> <p>13 you speak so that we can create an accurate record.</p> <p>14 I am looking at an agenda that was filed on the</p> <p>15 docket on November 16th at docket number 160. So that's my</p> <p>16 starting point. If I could please ask everyone to keep your</p> <p>17 phones on mute unless and until you speak, that would help.</p> <p>18 Thank you very much. And who would like to start on behalf</p> <p>19 of the debtor today?</p> <p>20 MR. DIPOMPEO: Good morning, Your Honor. This is</p> <p>21 Christopher DiPompeo of Jones Day for the debtor.</p> <p>22 THE COURT: Good morning.</p> <p>23 MR. DIPOMPEO: I'm joined this morning -- morning.</p> <p>24 I'm joined this morning by my colleagues Corinne Ball, Ben</p> <p>25 Rosenblum, Todd Geremia, Eric Stephens, Andrew Butler, and</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 Ben Thompson.</p> <p>2 Your Honor, the agenda that you referred to which</p> <p>3 the debtor filed on Sunday included two uncontested motions,</p> <p>4 pre-trial conferences, and two adversary proceedings, and</p> <p>5 two contested motions in connection with the IAC. Yesterday</p> <p>6 afternoon, we saw the Court entered orders with respect to</p> <p>7 the two uncontested motions which were the insurance motion</p> <p>8 and the Pachulski retention application.</p> <p>9 THE COURT: Yes, exactly.</p> <p>10 MR. DIPOMPEO: So unless -- yep -- unless the</p> <p>11 Court would like to discuss anything with respect to those</p> <p>12 motions, I think we can move to the next agenda item which</p> <p>13 is the pre-trial conference and the automatic stay adversary</p> <p>14 proceeding.</p> <p>15 THE COURT: Very good.</p> <p>16 MR. DIPOMPEO: Okay. So with respect to that --</p> <p>17 oh, I'm sorry.</p> <p>18 THE COURT: Go ahead. No, go ahead.</p> <p>19 MR. DIPOMPEO: I was going to say with respect to</p> <p>20 that adversary proceeding, a few things that happened since</p> <p>21 we were last before the Court on November 4th. First, the</p> <p>22 debtor has been diligently working to serve the 200-plus</p> <p>23 defendants with the complaint and summons with a very good</p> <p>24 cooperation from state court counsel for the defendants. In</p> <p>25 fact, counsel for all but four defendants have agreed to</p>   | <p style="text-align: right;">Page 12</p> <p>1 request does at least increase the possibility that we'll</p> <p>2 have to go forward with the contested hearing on December</p> <p>3 10th.</p> <p>4 You know, frankly, at this point, even if there</p> <p>5 were agreement on the topics of discovery which I'm sure</p> <p>6 there is, I think it would be very difficult to negotiate</p> <p>7 the scope of 117 document requests in just the three weeks</p> <p>8 we have before December 10th.</p> <p>9 THE COURT: Well, I don't -- thank you for that.</p> <p>10 I don't immediately understand the nexus between the ability</p> <p>11 to resolve on a consensual basis the duration of the stay</p> <p>12 and the need for that volume of discovery on that time</p> <p>13 table. So I don't know if this is the time to discuss that.</p> <p>14 Perhaps there should be an initial round of discussions</p> <p>15 between the debtors and committee counsel but that seems to</p> <p>16 me -- I agree with your observation that there wouldn't be</p> <p>17 time to work through that volume of discovery before the</p> <p>18 December 10th hearing, and I'm sure Mr. Stang will tell me</p> <p>19 why I am not looking at this correctly. But I simply do not</p> <p>20 understand why there would need to be that kind of</p> <p>21 connection when -- just to bring everybody back to the</p> <p>22 original page.</p> <p>23 The scope of the stay requested by the Diocese by</p> <p>24 my recollection was only until February 1st. So I don't</p> <p>25 know why we would expend a lot of extra time and resources</p> |
| <p style="text-align: right;">Page 11</p> <p>1 accept service on behalf of their clients. And as we</p> <p>2 discussed at the first day hearing, that's important to</p> <p>3 protect the confidentiality of survivors so we're glad that</p> <p>4 that's worked out -- worked out well.</p> <p>5 Service of the complaint and summons went out last</p> <p>6 week to all but those four defendants and we're still</p> <p>7 working out some kinks with counsel for a small number of</p> <p>8 defendants. The good news is we don't anticipate any issues</p> <p>9 with having service fully complete well in advance of the</p> <p>10 January 10th answer deadline.</p> <p>11 Second, we continue to have discussion with the</p> <p>12 committee about whether we can reach agreement on a</p> <p>13 consensual preliminary injunction. I know the committee has</p> <p>14 previously told the Court that those discussions are focused</p> <p>15 on information the committee believes it would need in order</p> <p>16 to agree to a consensual stay of the state court litigation.</p> <p>17 And last night we received the committee's proposed document</p> <p>18 requests. Those requests were more extensive than we were</p> <p>19 anticipating. They were 15 pages long and contained 117</p> <p>20 separate requests, and we're obviously still digesting those</p> <p>21 requests. I don't think it's worth going into the details</p> <p>22 now unless the Court has questions, but I did think it's</p> <p>23 worth noting that the requests are very broad, both in terms</p> <p>24 of topics and scope. And so while we're still hopeful that</p> <p>25 we'll be able to reach agreement, the breadth of their</p> | <p style="text-align: right;">Page 13</p> <p>1 negotiating over document requests. I mean, there will be</p> <p>2 discovery. The discovery will be broad -- appropriately</p> <p>3 broad -- and expeditious. I just don't understand the nexus</p> <p>4 between those two, and I'm frankly not willing just to</p> <p>5 resign myself to having a contested hearing. I will if it</p> <p>6 comes to that, of course. Perhaps Mr. --</p> <p>7 MR. STANG: Your Honor --</p> <p>8 THE COURT: Perhaps Mr. Stang would like to</p> <p>9 comment.</p> <p>10 MR. STANG: Thank you, Your Honor. James Stang</p> <p>11 for the committee.</p> <p>12 Your Honor, we are not expecting that the debtor</p> <p>13 will comply with all of those discovery -- with all those</p> <p>14 requests by the -- in time for the February 1 hearing. We</p> <p>15 have in other cases or in your cases, used the preliminary</p> <p>16 injunction stipulation as a means of obtaining information</p> <p>17 that we think is -- gives the nexus because they're asking</p> <p>18 for a stay -- an extraordinary stay -- against non-debtor</p> <p>19 parties and the discovery goes to, amongst other things,</p> <p>20 information about those third parties. So that's the nexus</p> <p>21 -- is that if you're going to have stay -- a litigation</p> <p>22 against third parties -- there should be conditions to that</p> <p>23 and the conditions should include discovery that is</p> <p>24 pertinent to those entities and, frankly, to the debtor.</p> <p>25 But we're not expecting that all of those requests</p>                                |

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| <p>1 are going to be fulfilled by next hearing on the preliminary<br/>2 injunction or the next time it expires. What we would be<br/>3 looking for is a resolution as best as we can reach it on<br/>4 the scope of the discovery and then commitments for rolling<br/>5 productions, and if progress is being made, as we have done<br/>6 in other cases, the stipulation has been continued.</p> <p>7 But that's the nexus. You're asking us to stay.<br/>8 You're asking plaintiffs to stay litigation against third<br/>9 parties who've not made -- taken the big step to being in<br/>10 Chapter 11. They want the protections and effect of the<br/>11 automatic stay and there should be something in<br/>12 consideration of that. That's the nexus, Your Honor.</p> <p>13 THE COURT: All right. Thank you for that. I<br/>14 mean, the practical reality is that today is November 18th.<br/>15 Next week is Thanksgiving which hopefully you all will be<br/>16 spending not with a lot of other people and then, you know,<br/>17 the 10th will be upon us before we know it. So it's helpful<br/>18 -- your explanation was helpful and it's encouraging that<br/>19 you are amenable to a more surgical approach with good faith<br/>20 continuing endeavors by the debtor to produce all the<br/>21 documents that you reasonably require, but I very much<br/>22 encourage to try to do both, to work on prioritizing,<br/>23 refining the document requests as quickly as possible so<br/>24 that we can -- well, first of all, enable the production to<br/>25 begin such that you feel that there's sufficient progress</p> | <p>1 mindful of the Court's offer at the last status conference<br/>2 to help sort out disputes that may arise in the course of<br/>3 the negotiations. And to the extent it would help in this<br/>4 negotiation, we certainly will take advantage of that.</p> <p>5 THE COURT: All right. Very good. All right. So<br/>6 should we turn to the shorthand -- my shorthand -- the<br/>7 insurance adversary which is number 20-101227, Roman<br/>8 Catholic Diocese of Rockville Centre versus Arrowood<br/>9 Indemnity, et al?</p> <p>10 MR. BERRINGER: Your Honor, this is John Berringer<br/>11 of special counsel -- insurance counsel to the debtors and<br/>12 I'm --</p> <p>13 THE COURT: Yes.</p> <p>14 MR. BERRINGER: -- counsel in the adversary<br/>15 proceeding.</p> <p>16 THE COURT: Good morning.</p> <p>17 MR. BERRINGER: The status of the -- good morning,<br/>18 Your Honor. The status of the proceeding as of now is that<br/>19 we have granted, subject to stipulations and Court approval,<br/>20 a number of extensions of the time to answer so that the --<br/>21 and the carriers have been requesting that they all come --<br/>22 get the same date and it's, as I understand it, December<br/>23 28th. So we have not had answers to the complaint yet from<br/>24 any of the insurers. It's my understanding that a number<br/>25 of the insurers have not -- insured defendants -- have not</p>  |
| Page 15  | Page 17   |
| <p>1 that the stay can be extended. So I understand the nexus<br/>2 but I also really want both paths to be pursued. The<br/>3 debtor's replay brief is due on December 3rd. So you really<br/>4 got about, you know, a week before Thanksgiving hits to kind<br/>5 of get to a fork in the road and figure out which way we're<br/>6 going to go on this.</p> <p>7 If we're going to be having a contested hearing<br/>8 over the stay on December 10th, we have a whole heck of a<br/>9 lot of work to do because I will insist that we have that<br/>10 hearing on Zoom and that will require a lot of preparation,<br/>11 both on the part of the Court, the court staff, and the<br/>12 parties to ensure that it will be technologically smooth.<br/>13 So we're going to need to figure this out pretty quickly.</p> <p>14 So I'll leave it there for now and before we sign off<br/>15 for today, we're going to -- what I'd like to do is pick a<br/>16 date for, as my former colleague Judge Gerber used to say, a<br/>17 stop, look, and listen to hear where you are so we know what<br/>18 to plan for. Is that acceptable?</p> <p>19 MR. STANG: Your Honor, this is Mr. Stang.<br/>20 Absolutely.</p> <p>21 THE COURT: All right.</p> <p>22 MR. DIPOMPEO: And Your Honor, this is Christopher<br/>23 DiPompeo. That's also acceptable to us. And we're also --<br/>24 we're going to continue discussions. We do have a call<br/>25 scheduled for later this week with the committee and we're</p>  | <p>1 appeared. I believe that's primarily certain of the<br/>2 participants in the London market policies at issue.</p> <p>3 We understand and anticipate that there will a<br/>4 motion to withdraw the reference made by one or more<br/>5 insurers, presumably at the December 28th date for an<br/>6 answer. The committee has indicated that they're going to<br/>7 move to intervene. The debtor does not oppose that motion<br/>8 to intervene, but we understand that Arrowood and perhaps<br/>9 other insurers will be opposing the motion to intervene.</p> <p>10 In terms of moving the case forward, we believe<br/>11 that the motions by the debtor for a bar date and for<br/>12 approval of a proof of claim form will be a precursor to<br/>13 determining what discovery, if any, is needed by the<br/>14 insurance companies beyond the information that will be<br/>15 provided in the proof of claim form. So we believe that we<br/>16 should not be moving forward with discovery in our case<br/>17 until we see the parameters of the kind of information the<br/>18 claimant -- the victims -- are going to have to put forward<br/>19 in their proof of claim form which may -- hopefully will<br/>20 address much of what the insurance companies need in order<br/>21 to evaluate the value of the case.</p> <p>22 And with all of that said, we think that the best<br/>23 way to proceed at this point would be to set a new<br/>24 conference date in the new year after the answers have been<br/>25 filed and any motions have been made in terms of either</p> |



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| <p style="text-align: right;">Page 18</p> <p>1 withdrawing the reference or intervening on behalf of the<br/>2 committee. So we think that's sort of -- we're in limbo<br/>3 right now waiting for further developments in terms of<br/>4 answers and motion practice. Thank you.<br/>5 THE COURT: Okay. And then I'm happy to hear from<br/>6 -- I see Mr. or Ms. Coughlin has raised his or her hand.<br/>7 MR. COUGHLIN: Yes. Good morning, Your Honor.<br/>8 It's Kevin Coughlin of behalf of Arrowood. I just --<br/>9 THE COURT: Okay.<br/>10 MR. COUGHLIN: -- want to comment briefly on<br/>11 something Mr. Berringer has raised and that is the scope of<br/>12 discovery. As Your Honor may or may not know, the insurers<br/>13 and the Diocese have been in an unlitigated dispute for<br/>14 almost two years and the insurers have been requesting<br/>15 information from the Diocese that entire period. And those<br/>16 requests by 95 percent have been unanswered and the Diocese'<br/>17 position that the only discovery that's going to be needed<br/>18 here is what I'd characterize as plaintiff's damages type<br/>19 discovery to help full out the proof of claim<br/>20 underestimates, respectfully, the scope of what the insurers<br/>21 have been looking for and will be looking for.<br/>22 There's no secret. This has been -- pedophilia's<br/>23 been a problem in the Church for decades and decades, and we<br/>24 have cases that will be before Your Honor as part of the<br/>25 proofs of claim that go back decades. And insurers have the</p>         | <p style="text-align: right;">Page 20</p> <p>1 would be to keep going as I would if the motion to withdraw<br/>2 the reference has not -- had not been decided. So that's<br/>3 just a statement of my general approach. Obviously, each<br/>4 case is different but that's just what I would state for<br/>5 everyone's edification. Whether or not the committee<br/>6 intervenes is on a different track. I hear you on discovery<br/>7 and, you know, would address that as and when any discovery<br/>8 disputes in future would arise and are unable to be<br/>9 resolved.<br/>10 I see that someone on behalf of certain other<br/>11 insurers has their hand raised. Mr. or Ms. Sugayan.<br/>12 MS. SUGAYAN: Thank you, Your Honor. It's Cathy<br/>13 Sugayan. I'm attorney at Clyde &amp; Co. in the Chicago office<br/>14 and I represent certain underwriters at Lloyd's London and<br/>15 London Market Companies.<br/>16 Just first off, we agree with Mr. Berringer and<br/>17 thank the debtor. We do have an extension of time in which<br/>18 to response and we -- London is considering the motion to<br/>19 withdraw the reference. What I really wanted to get to is<br/>20 the issue on discovery and it's a follow up to what Attorney<br/>21 Stang was talking and also Attorney Coughlin.<br/>22 We've been in a couple of these before -- not with<br/>23 Jones Day or Reed Smith. I'm very familiar with Jim Stang.<br/>24 We've been through a number of bankruptcies with him. But I<br/>25 think it's really important to advise the Court that all the</p> |
| <p style="text-align: right;">Page 19</p> <p>1 intention of seeking discovery on what the Diocese knew,<br/>2 when and what they did with respect to, for example, moving<br/>3 priests from parish to parish and what was behind that. So<br/>4 we envision a very robust discovery process once the case is<br/>5 positioned after December 28th to develop those very<br/>6 important defenses. So I think we should prepare of that,<br/>7 with all due respect. Thank you, Your Honor.<br/>8 THE COURT: May I ask -- thank you -- may I -- let<br/>9 me catch up with both of you and sort this out. So who is<br/>10 it that's -- I don't know if you know or if either of you<br/>11 know -- who is it that's going to making a motion to<br/>12 withdraw the reference?<br/>13 MR. COUGHLIN: I can tell you, Your Honor -- this<br/>14 is Kevin Coughlin again -- that's under consideration by my<br/>15 client but we've not received final instructions yet.<br/>16 THE COURT: Okay. And just for my edification --<br/>17 well, I'll leave that question unanswered. Obviously, a<br/>18 motion to withdraw the reference is filed with the district<br/>19 court and the district courts decides whether or not to<br/>20 withdraw the reference.<br/>21 I will tell you that in the absence of direction<br/>22 to the contrary from the district court, the case is before<br/>23 me until it's not and that means that the case will proceed<br/>24 until a higher authority tells me that it doesn't. And that<br/>25 includes continuing to conduct discovery and my intention</p> | <p style="text-align: right;">Page 21</p> <p>1 parties are pretty much looking for the same information.<br/>2 The insurers want information from the claimants so as a<br/>3 result one of the things we tried to do first off is work<br/>4 with the creditors committee and also with the debtor to<br/>5 work on a proof of claim form that everyone can kind of<br/>6 agree with so everyone can get the information that we need<br/>7 up front. It's like the most like less intrusive way, I<br/>8 guess, to -- actually, least intrusive way -- to obtain<br/>9 information from the survivors who we know it's a very<br/>10 personal thing to them and it's difficult to provide this<br/>11 information. And it's easier to do through a confidential<br/>12 form.<br/>13 THE COURT: May I interrupt you for a moment,<br/>14 please?<br/>15 MS. SUGAYAN: Sure.<br/>16 THE COURT: You make a good point. And again,<br/>17 each case is different and we have to be aware of that, but<br/>18 are there not proofs of claim forms from other Diocese cases<br/>19 that are good templates for what (indiscernible)?<br/>20 MS. SUGAYAN: There are, Your Honor, and we will<br/>21 go forward and do that. I guess I'm just trying to let the<br/>22 debtor and debtor's coverage counsel and also Mr. Stand who<br/>23 I've worked with before know that the carriers are<br/>24 interested in being involved in this case. We'd like to<br/>25 work with them upfront rather than having things filed and</p>  |

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| <p style="text-align: right;">Page 22</p> <p>1 then contesting and filing things after the fact. To the<br/>2 extent that we can reach agreement earlier, I think it's<br/>3 best for all parties.</p> <p>4 The other piece of information we need is<br/>5 information from the Diocese and as Mr. Stang alluded to --<br/>6 I know, for example, in Rochester, the committee there<br/>7 stipulated to a stay of proceedings against non-debtor<br/>8 related entities which, by the way, happen to be additional<br/>9 insureds under the London Market policies. So it behooves<br/>10 us to try to bring everything together if we can. Our<br/>11 insurance policies are a common asset of the debtor's estate<br/>12 as well as these parishes. And so we sort of join the<br/>13 committee in seeking the information it seeks from the<br/>14 debtor with respect to, you know, the claims.</p> <p>15 THE COURT: All right. Thank you. Well, I'm<br/>16 fully supportive of the continuing to talk to each other<br/>17 approach, but I don't want anyone to mistake that -- and<br/>18 I've said this before -- for any reluctance on my part to<br/>19 decide disputes that are brought before me. So negotiation,<br/>20 less paper, less litigation is good, but I'm absolutely<br/>21 prepared to resolve disputes when they're teed up before me.</p> <p>22 Mr. Berringer, did you want to respond again to<br/>23 any of that?</p> <p>24 MR. BERRINGER: Yes, just briefly, Your Honor, to<br/>25 inform the Court that we were aware of the use of the proof</p>    | <p style="text-align: right;">Page 24</p> <p>1 Todd Geremia from Jones Day.</p> <p>2 THE COURT: Yes. Hello, Mr. Geremia. How are<br/>3 you?</p> <p>4 MR GEREMIA: I'm well. How are you, Your Honor?</p> <p>5 THE COURT: I'm okay.</p> <p>6 MR GEREMIA: So by these applications, the debtor<br/>7 seeks retention of counsel, namely Otterbourg and a<br/>8 financial advisor, Goldin, to assist its independent<br/>9 advisory committee in moving forward to pursue what that<br/>10 committee has already concluded and shared with the debtor,<br/>11 our colorable claims for the benefit of the debtor. As Your<br/>12 Honor knows, the U.S. Trustee and the official committee of<br/>13 unsecured creditors has objected to these retention<br/>14 applications.</p> <p>15 I will initially defer to Mr. Feldman for the<br/>16 independent advisory committee to, among other things, set<br/>17 out the relevant facts in support of these applications and<br/>18 answer any questions that the Court has with respect to<br/>19 those. And then I, on behalf of the debtor, can address any<br/>20 remaining issues concerning her objections and the best<br/>21 interest of the estate with respect to these applications.</p> <p>22 If that is good for Your Honor --</p> <p>23 THE COURT: All right.</p> <p>24 MR GEREMIA: -- we will proceed with Mr. Feldman.</p> <p>25 THE COURT: All right. I'll hear from Mr.</p>  |
| <p style="text-align: right;">Page 23</p> <p>1 of claim form in other bankruptcies involving sexual abuse<br/>2 and we have used those forms as a template. We have shared<br/>3 the proof of claim form with counsel for the insurers and<br/>4 hope to arrive at a form that will obviate the need for at<br/>5 least some of the broad discovery that apparently the<br/>6 insurers are seeking. And I -- you know, we're hopeful that<br/>7 we can continue to refine that proof of claim form so it<br/>8 will provide much of the information which I think the<br/>9 insurers legitimately may need in order to access the case<br/>10 and the value of the case in terms of ultimate resolution.</p> <p>11 THE COURT: Okay. All right. I think that's all<br/>12 we might have on this. To the extent that folks are looking<br/>13 for a date, I think the easiest thing to do as this<br/>14 progresses a bit is just to reach out to Ms. Eisen and my<br/>15 chambers and she can give you any dates that you require.<br/>16 All right?</p> <p>17 MR. BERRINGER: Okay. That sounds good, Your<br/>18 Honor.</p> <p>19 THE COURT: All right. Let me just ask for the<br/>20 sake of good order, does anybody else wish to be heard with<br/>21 respect to the status of the insurance adversary proceeding?<br/>22 All right. At this point, we can move on to the contested<br/>23 matters which are the Otterbourg retention and the Goldin<br/>24 retention. And who am I hearing from from Jones Day?</p> <p>25 MR GEREMIA: Your Honor, can you hear me? This is</p> | <p style="text-align: right;">Page 25</p> <p>1 Feldman. Mr. Feldman, are you there?</p> <p>2 MR. FELDMAN: I am, Your Honor. Can you hear me?</p> <p>3 THE COURT: Yes, I can. Thank you.</p> <p>4 MR. FELDMAN: Great. Thank you. Peter Feldman,<br/>5 Otterbourg PC, proposed counsel to the independent advisory<br/>6 committee of the Diocese which I'll refer to as -- excuse me<br/>7 -- the IAC to make it easier.</p> <p>8 Your Honor, I don't want to belabor the factual<br/>9 background. It's set forth, I think, very clearly in the<br/>10 declarations that were submitted by the chair of the IAC,<br/>11 Mr. Arthur Gonzalez, but I do think that it is helpful to<br/>12 place the retention applications in a context by going<br/>13 through and discussing some of the background, and<br/>14 particularly, to understand why the AIC considers it<br/>15 imperative to its proper functioning for these applications<br/>16 to be granted.</p> <p>17 As Your Honor is aware, the applications are<br/>18 intended to retain Otterbourg as legal counsel and Goldin<br/>19 Associates as financial advisor to the AIC and these were<br/>20 the very firms that assisted the IAC in the pre-petition<br/>21 extensive investigation that the IAC conducted. Needless to<br/>22 say, as a result of those -- that year-long investigation,<br/>23 these two firms have substantial information regarding the<br/>24 investigation issues, including the colorable claims that<br/>25 the AIC concluded existed.</p> |

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| <p>1 Let me give some background to the IAC and the --</p> <p>2 I'm sorry --</p> <p>3 THE COURT: Mr. Feldman --</p> <p>4 MR. FELDMAN: Yes, ma'am. Yes, Your Honor.</p> <p>5 THE COURT: Let me interrupt you. Please assume</p> <p>6 that I've read the pleadings multiple times but I'm happy to</p> <p>7 hear your presentation. I have a number of questions but</p> <p>8 here's my first question.</p> <p>9 MR. FELDMAN: Yes.</p> <p>10 THE COURT: In the papers, a number of</p> <p>11 transactions were identified that have been identified by</p> <p>12 the IAC as appropriate for litigation or settlement --</p> <p>13 transfers that were made in the relevant period of time. I</p> <p>14 don't get a sense from the application the percent</p> <p>15 completion of the universe of transactions that the IAC was</p> <p>16 investigating. In other words, how much work is yet to be</p> <p>17 done on identifying additional colorable claims related to</p> <p>18 transactions?</p> <p>19 MR. FELDMAN: If I can break that down into two</p> <p>20 pieces, Your Honor.</p> <p>21 THE COURT: Okay.</p> <p>22 MR. FELDMAN: I'm sorry. Did I interrupt you?</p> <p>23 THE COURT: No, no, no. Go ahead.</p> <p>24 MR. FELDMAN: So there were several transactions</p> <p>25 that the IAC investigated because its investigatory mandate</p>   | <p>1 \$2-1/2 million transaction. I cannot speak to that.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. FELDMAN: It's not part of the IAC's mandate.</p> <p>4 THE COURT: It's not contemplated that the -- that</p> <p>5 hypothetically if the IAC were to continue that the IAC's</p> <p>6 mandate would be expanded to include transaction smaller</p> <p>7 than involving \$2.5 million?</p> <p>8 MR. FELDMAN: That is my understanding, Your</p> <p>9 Honor. We would -- the IAC, if continue, would be focused</p> <p>10 on the transactions that it already investigated and for</p> <p>11 which it found claims exist.</p> <p>12 THE COURT: Okay. All right. Thank you. I</p> <p>13 interrupted you. Please continue.</p> <p>14 MR. FELDMAN: Well, I will try and move forward.</p> <p>15 I did want to identify -- and I know the Court has read the</p> <p>16 papers -- but the -- what the Diocese did was it created a</p> <p>17 committee through its resolution. It's a committee of the</p> <p>18 board itself. This is set forth in the resolution which is</p> <p>19 attached to the papers of the -- I think it's in Mr.</p> <p>20 Gonzalez's reply declaration. I think it's that docketed at</p> <p>21 153.</p> <p>22 THE COURT: No. I get all this. This is not --</p> <p>23 by statute, the board can only consist of the bishop and two</p> <p>24 other individuals and that this is -- who's ever shuffling</p> <p>25 papers, put your phone on mute, please -- and that this is a</p>  |
| Page 27  | Page 29   |
| <p>1 was to investigate these affiliated transactions for filiate</p> <p>2 transactions with a value of \$2-1/2 million or more that</p> <p>3 were conducted in the January 1, 2014, forward. And that</p> <p>4 resulted in not -- sort of a handful of transactions.</p> <p>5 Transaction involving the cemetery assets and related funds,</p> <p>6 the transfer of certain real property that had been owned by</p> <p>7 the Diocese that was transferred to the seminary</p> <p>8 corporation. There was some additional assets and -- that</p> <p>9 were transferred to -- the board of education is it's</p> <p>10 called. It's a separate entity. And there was a smaller</p> <p>11 transaction -- 3 million -- that was made to the Catholic</p> <p>12 Foundation. Those are the transactions that were</p> <p>13 investigated because they were in the range and the \$2-1/2</p> <p>14 million value or more.</p> <p>15 I'm not aware of any other transactions that fell</p> <p>16 onto that category and therefore, the focus of the IAC was</p> <p>17 on those several -- there was several transactions in</p> <p>18 respect of each what are deemed -- like the cemetery</p> <p>19 transaction has several -- but that was the focus of the IAC</p> <p>20 -- those four transactions, if I can call them that.</p> <p>21 There are other transactions that may exist -- and</p> <p>22 I can't speak to that -- that were of a value of less than</p> <p>23 \$2-1/2 million. As to those, the IAC did not investigate,</p> <p>24 was not part of its mandate, and they didn't have the -- the</p> <p>25 IAC had no delegated authority with respect to the less than</p> | <p>1 creation -- you know, a creation of a committee and, you</p> <p>2 know, quote/unquote, of the board that has a delegation from</p> <p>3 the Diocese to investigate the transactions. So I</p> <p>4 understand the architecture of this. The difference, of</p> <p>5 course, is that unlike other cases in which there's a so-</p> <p>6 called special committee, the special committee is</p> <p>7 ordinarily comprised of independent directors who sit on the</p> <p>8 board of the debtor. That's not the case here and that</p> <p>9 appears to be because that's precluded by statute. At least</p> <p>10 that's the way I understand it.</p> <p>11 MR. FELDMAN: That is correct, Your Honor. The</p> <p>12 statute that formed the Diocese, and Mr. Geremia will get</p> <p>13 into this, I'm sure as well as the bylaws of the Diocese,</p> <p>14 prescribe a limited board of the three persons. And the --</p> <p>15 but beyond that, the members of the IAC are not directors,</p> <p>16 as Your Honor noted, and they don't have director duties.</p> <p>17 They don't -- they're not involved in the types of matters</p> <p>18 that directors get involved with -- setting corporate or in</p> <p>19 this case, diocesan policies, procedures dealing with</p> <p>20 personnel, finances, and the like.</p> <p>21 They have a very discrete mandate, one that is</p> <p>22 very limited in scope. So -- and although there are more --</p> <p>23 it is more typical for special committees to be comprised of</p> <p>24 directors, perhaps in this case, that's not so, but I don't</p> <p>25 think there's any basis that there should a difference in</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 the type of persons who are -- who comprise the special<br/>2 committee. The fact that some of directors and some aren't<br/>3 should not, I don't think, make a difference for the ability<br/>4 of the debtor to conduct an investigation as it's done in<br/>5 pre-petition period and to pursue these claims for the<br/>6 benefit of the estate. And there's at least one of the<br/>7 matters that we've attached to our --<br/>8 THE COURT: Well, you haven't -- you're rather<br/>9 assuming the conclusion that you want. I mean, that's the -<br/>10 - that is the question. That is the very question. The --<br/>11 of 327 retention and to base it upon precedent -- the<br/>12 precedents are special committees comprised of members of<br/>13 the board of directors of the debtors. So we can't simply<br/>14 jump to the conclusion that, so, you know, it should be fine<br/>15 here, notwithstanding the fact that these individuals are<br/>16 not members of the board because they cannot be. That<br/>17 assumes the conclusion and the resolution of the very issue<br/>18 that I'm going to be struggling with here today.<br/>19 MR. FELDMAN: There is at least one matter which I<br/>20 believe to be the Allied Holdings matter where at least one<br/>21 of -- and I grant you, Your Honor, most of the cases in the<br/>22 orders that we've attached to the paper that we submitted<br/>23 are of special committees composed of directors. At least<br/>24 one, the Allied Holdings matter, and at least one of the two<br/>25 members of that committee who was not a director -- he was a</p> | <p style="text-align: right;">Page 32</p> <p>1 personnel.<br/>2 We interviewed senior diocesan personnel,<br/>3 including both of the bishops. The bishop who was involved<br/>4 prior to January 2017 and Bishop Barres the current bishop -<br/>5 - we interviewed -- the COO and general counsel Mr. Renker -<br/>6 - interviewed the CFO, Mr. Doodian and we interviewed the --<br/>7 because insurance is important, we interviewed Mr. Chapin,<br/>8 the head of the risk management. We spoke numerous times to<br/>9 the financial consultants for the debtor -- then the Diocese<br/>10 not the debtor -- and spoke to their insurance professionals<br/>11 as well. So it was a very complete investigation and as<br/>12 I've noted, there were no -- there was no oversight. There<br/>13 was no input or supervisory control by the Diocese.<br/>14 I think at bottom, the -- I think it should be<br/>15 clear that this is - that the -- in addition to be<br/>16 independent, I should point out -- it's in the papers but --<br/>17 each of the -- and this is part of the issue the Court<br/>18 raised -- each of the IAC members is an independent<br/>19 contractor and -- but nonetheless, it engaged in a thorough<br/>20 investigation and one which, at this juncture, the IAC has<br/>21 been delegated by the debtor to pursue the claims that it<br/>22 found existed. Those claims the IAC is ready to proceed to<br/>23 pursue immediately if the Court were to retain professionals<br/>24 for it. That's the issue.<br/>25 If the Court -- if the IAC doesn't continue -- if</p> |
| <p style="text-align: right;">Page 31</p> <p>1 member of the financial consulting firm of Duff &amp; Phelps --<br/>2 and it appears that the other party was an officer of an<br/>3 affiliate of the debtor but not necessarily a director.<br/>4 It's unclear so I can't represent one way or the other. But<br/>5 at least in that one instance, there is a -- that that<br/>6 instance involved a non-director as a member of a special<br/>7 committee.<br/>8 But I understand the Court's point that that's --<br/>9 typically, you're going to see it because you can add<br/>10 members to the board, let's say, but in this instance, it's<br/>11 not how it proceeded. I understand the Court's point. I<br/>12 know Mr. Geremia will speaking to that.<br/>13 I'd like to just point out then, since the Court<br/>14 is aware of the fact that the IAC conducted an extensive<br/>15 investigation that involved countless -- review of countless<br/>16 documents that reviewed -- and I should point out the<br/>17 Diocese, although had no supervisory role and no input and<br/>18 did not provide direction or any influence with respect to<br/>19 the investigation or the IAC's conclusions, it did -- in<br/>20 fact, it was very cooperative. It provided all the<br/>21 documentation requested and we had substantial documents,<br/>22 both emails -- I think there was -- I don't know if it's<br/>23 pages or documents. I get confused by the manner in which<br/>24 these are counted. But there are well in excess of 200,000<br/>25 pages, I believe, excess of emails of senior diocesan</p>   | <p style="text-align: right;">Page 33</p> <p>1 it's -- if these professionals -- and it's my firm and the<br/>2 Goldin firm -- because of the one year's worth of<br/>3 investigatory knowledge that we acquired -- that these firms<br/>4 have acquired -- if the Court is not to retain these firms,<br/>5 then I think a great deal of knowledge, expertise, and cost<br/>6 will go out the window.<br/>7 I don't mean to suggest that other parties can't -<br/>8 - other firms can't come in and learn it, but I do think<br/>9 there's a steep learning curve. I think that there will be<br/>10 time lost and great expense. I think that it would be --<br/>11 it's not surprising that in Mr. Gonzalez's declaration he<br/>12 said that the retention of these two firms is essential to<br/>13 the IAC's continued process in this case to pursue these<br/>14 claims on behalf of the estate.<br/>15 And so, with that, Your Honor, in view of the<br/>16 Court's knowledge of the record before it, I don't see any<br/>17 reason to belabor and duplicate what the Court knows. I'll<br/>18 turn this over to Mr. Geremia or back to Mr. Geremia.<br/>19 THE COURT: All right. Thank you very much. Mr.<br/>20 Geremia?<br/>21 MR GEREMIA: Thank you, Your Honor. And I will<br/>22 start with the issue that Your Honor just raised now which<br/>23 is the status of the IAC. And just to, I think, focus that<br/>24 issue, I want to turn to what the committee -- the UCC's --<br/>25 objection is to these retention applications.</p>   |

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| <p style="text-align: right;">Page 34</p> <p>1 And that objection is -- it's on page 3 of the<br/>2 sur-reply -- that the independent advisory committee is not<br/>3 a committee of the board. And as Your Honor noted and as<br/>4 Mr. Feldman noted, there is, in this context, the board's --<br/>5 the Diocese board of Trustees as prescribed by statute to<br/>6 three individuals, the bishop, the vicar general, and the<br/>7 chancellor, and the IAC members are none of those. But the<br/>8 sur-reply relies on a provision of a New York not-for-profit<br/>9 law that overlooks and cites only in a footnote a provision<br/>10 of that law that we believe disposes of this application and<br/>11 under which it should be overruled.</p> <p>12 That is, New York not-for-profit law, section<br/>13 712(e) which applies to the Diocese Corporation provides,<br/>14 and I'm quoting here: Committees other than committees of<br/>15 the board, whether created by the board or by the members,<br/>16 shall be committees of the corporation. So the IAC, in<br/>17 accordance with not only the statute but the board<br/>18 resolution that created it and the offer letters that were<br/>19 extended to the IAC members, is a committee of the Diocese<br/>20 board of Trustees.</p> <p>21 That, I think, disposes of the committee's<br/>22 objection and answers the question that Your Honor raised is<br/>23 a concern that this special committee is not a committee of<br/>24 the board. It is by statute by New York not-for-profit law.<br/>25 And as Mr. Feldman noted, the board resolution is in</p> | <p style="text-align: right;">Page 36</p> <p>1 The IAC has already determined that the claims are<br/>2 colorable so it has every plan and intention to move forward<br/>3 with respect to the claims and to authorize the IAC to do<br/>4 that. And in any event, the sur-reply walks through a<br/>5 number of cases --</p> <p>6 THE COURT: But the claims will involve,<br/>7 generically, seeking the return of properties. Just<br/>8 generically. Right? Or damages or some kind. Right?</p> <p>9 MR GEREMIA: That is correct.</p> <p>10 THE COURT: Okay. And the basis of those claims<br/>11 is that it was improper and consistent with law, however you<br/>12 want to characterize it, for the Diocese to have transferred<br/>13 those properties. Correct?</p> <p>14 MR GEREMIA: I could defer to Mr. Feldman for a<br/>15 characterization of them because he and his committee but in<br/>16 general terms --</p> <p>17 THE COURT: I mean, it's a transfer that you want<br/>18 to seek to undo or get value back in the amount of the<br/>19 transfer. Right?</p> <p>20 MR. FELDMAN: Your Honor, this is Peter Feldman<br/>21 from Otterbourg. That is correct. We want to recover<br/>22 value.</p> <p>23 THE COURT: Right. So -- right. So you're going<br/>24 to have a special committee of the board of the Diocese<br/>25 comprised of people who were selected and are paid by the</p> |
| <p style="text-align: right;">Page 35</p> <p>1 accordance with this. The second whereas clause -- it's a<br/>2 long sentence but reading in the middle of the first<br/>3 sentence, states that, the board shall establish a special<br/>4 advisory committee of the board, in parenthesis, the<br/>5 independent advisory committee, consisting of the<br/>6 independent members that were named. And as we noted in our<br/>7 papers -- actually, in the letter that we submitted in<br/>8 response to the request to submit a sur-reply -- the offer<br/>9 letters that went to each of the members similarly states<br/>10 for each of them that the IAC is a committee of the Diocese<br/>11 board. And really is the extent of the UCC's substance to<br/>12 the objection, that the IAC is not part of the Diocese. And<br/>13 it just frankly is by statute.</p> <p>14 The committee points to the fact that -- and this<br/>15 is the only context in which the statute was referenced in<br/>16 this paper -- that no such committee shall have the<br/>17 authority to bind the board. That is not the question,<br/>18 respectfully, that's before the Court in connection with<br/>19 these applications. The question is whether the Diocese<br/>20 should be permitted to retain these professionals to assist<br/>21 the IAC. And in any event, it is, on this record, a moot<br/>22 and hypothetical question because the Diocese has already<br/>23 conveyed in open court to the Court and to the committee<br/>24 that it wants the IAC to pursue these claims on behalf of<br/>25 the Diocese.</p>                 | <p style="text-align: right;">Page 37</p> <p>1 Diocese suing the Diocese. Right?</p> <p>2 MR GEREMIA: Yes, Your Honor. The -- yes. That<br/>3 is correct and that -- I'm sorry.</p> <p>4 THE COURT: And that's what it's going to be?<br/>5 You're going to have a board of individuals selected and<br/>6 paid by the Diocese, represented by firms paid by the<br/>7 Diocese suing the Diocese. And --</p> <p>8 MS. BALL: Your Honor, no.</p> <p>9 THE COURT: Excuse me.</p> <p>10 MS. BALL: Your Honor --</p> <p>11 THE COURT: Excuse me. Those are the -- that is<br/>12 the construct. Those are the facts. Ms. Ball, if you'd<br/>13 like to speak, I'd appreciate not being interrupted.</p> <p>14 MS. BALL: My apologies, Your Honor.</p> <p>15 THE COURT: Go ahead.</p> <p>16 MS. BALL: Your Honor, I just -- one clarification<br/>17 and Mr. Feldman, I would defer to you. This is -- hindsight<br/>18 is always 20/20 but the lawsuit here, it's not the Diocese<br/>19 suing the Diocese. The lawsuit here, these are, as Mr.<br/>20 Stang has pointed out to Your Honor, these are separate<br/>21 affiliates.</p> <p>22 THE COURT: No, I understand the transfer --</p> <p>23 MS. BALL: This situation -- so it is not the<br/>24 Diocese that would be the defendant.</p> <p>25 THE COURT: I understand that the transferees are</p>   |

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| <p style="text-align: right;">Page 38</p> <p>1 the affiliates. I understand that.</p> <p>2 MS. BALL: This is much like any other affiliate</p> <p>3 transfer in many other cases where with hindsight, judging</p> <p>4 with -- by facts that were developed, there may be claims.</p> <p>5 Whether it was Sears and Mr. Lampert or in any other context</p> <p>6 in many of the cases cited by Mr. Feldman, but I had -- only</p> <p>7 want to point out I did not want Your Honor to think that</p> <p>8 the Diocese was going to be on both sides of the V in any</p> <p>9 such claims.</p> <p>10 Mr. Feldman can concur.</p> <p>11 MR. FELDMAN: Yes. I was going to -- yes, I will</p> <p>12 concur. This is Peter Feldman on behalf of the IAC and I</p> <p>13 guess proposed counsel on behalf of the IAC. Yes, I mean,</p> <p>14 each of the four separate matters that were investigated --</p> <p>15 transactions -- are all to parties -- entities -- that are</p> <p>16 separately incorporated. There is a relationship to the --</p> <p>17 there is a relation to the Diocese. I think the bishop may</p> <p>18 have some involvement in one or more of these but each of</p> <p>19 them is a separate entity, in fact, represented by separate</p> <p>20 counsel. I believe certain of those counsel are on the call</p> <p>21 today. So the -- we've always looked at this, Your Honor,</p> <p>22 as -- precisely as Ms. Ball has described it. It's a</p> <p>23 lawsuit by the Diocese as a debtor in possession against</p> <p>24 entities that are affiliates of the debtor but who -- that</p> <p>25 are separate entities, separately represented and -- so it</p> | <p style="text-align: right;">Page 40</p> <p>1 freed them of conflicts to pursue the claims, which as we</p> <p>2 set out in our papers, under the code, the debtor is a</p> <p>3 fiduciary to the estate and has the obligation to</p> <p>4 investigate the estate's claims. So it is in furtherance of</p> <p>5 the fiduciary duty to the estate the debtor -- I'm sorry,</p> <p>6 Your Honor. Is that -- I got some feedback. I thought you</p> <p>7 were speaking.</p> <p>8 THE COURT: No, it wasn't me.</p> <p>9 MR GEREMIA: That the debtor is seeking to retain</p> <p>10 professionals that the IAC needs to continue its</p> <p>11 investigation and to pursue the claims which the Diocese</p> <p>12 wants the IAC to do to either negotiation or, if necessary,</p> <p>13 commencing of litigation to do that.</p> <p>14 THE COURT: All right. Well, it's something that</p> <p>15 you said reminded me of something that I wanted to say at</p> <p>16 the outset, but let me say it now than letting the moment</p> <p>17 pass.</p> <p>18 This is about whether or not the retention of</p> <p>19 these firms is permissible under the bankruptcy code and</p> <p>20 appropriate in this case. This has nothing whatsoever to do</p> <p>21 with the three individuals who comprise the IAC, all of whom</p> <p>22 are well-known to me and are -- have impeccable reputations</p> <p>23 and decades of experience. So this has nothing whatsoever</p> <p>24 to do with any questions or concerns that I have about any</p> <p>25 of those individuals and their dedication to the task that</p>  |
| <p style="text-align: right;">Page 39</p> <p>1 wouldn't be the Diocese suing the Diocese. It would be the</p> <p>2 Diocese suing these other entities.</p> <p>3 THE COURT: All right. Well, let's pick up where</p> <p>4 I interrupted Mr. Geremia sometime ago.</p> <p>5 MR GEREMIA: Thank you, Your Honor. And, you</p> <p>6 know, just to reframe it. The only question -- the only</p> <p>7 substance behind the UCC's objection is the notion that the</p> <p>8 IAC is not a committee of the board so it's not really the</p> <p>9 Diocese that is requesting that these professionals be</p> <p>10 retained. That's simply not true under the facts and under</p> <p>11 the very statute that the committee invokes in its sur-reply</p> <p>12 which makes very clear that a committee other than a</p> <p>13 committee of the board that is created by the board shall be</p> <p>14 regarded as a committee of the corporation, so a committee</p> <p>15 of the Diocese.</p> <p>16 And that is -- you know, as Your Honor and Mr.</p> <p>17 Feldman and Ms. Ball are aware, special committees of the</p> <p>18 board are frequently appointed in bankruptcy cases to</p> <p>19 investigate intra-affiliate transactions such as these. The</p> <p>20 whole notion that's behind the IAC was to appoint</p> <p>21 individuals -- set up a structure whereby we had a conflict-</p> <p>22 free committee that was pursuing the investigation of these</p> <p>23 claims. We appointed members that have no prior affiliation</p> <p>24 with the Diocese, that have no conflict, that have stellar</p> <p>25 reputations. So to be able to do this in a manner that</p>           | <p style="text-align: right;">Page 41</p> <p>1 they have undertaken and the seriousness and the confidence</p> <p>2 with which they will continue to pursue it. So I don't want</p> <p>3 there to be any sense or any implication that I'm thinking</p> <p>4 about it in those terms. I'm approaching this as whether or</p> <p>5 not this is permissible under the bankruptcy code.</p> <p>6 I think it would be a good time now to hear from</p> <p>7 Mr. Stang but also there has been an objection lodged by the</p> <p>8 Office of the U.S. Trustee. I'm scrolling to see. I do see</p> <p>9 Mr. Zipes is on the line. But, Mr. Stang, I'd like to hear</p> <p>10 from you first or whoever it is on your team will speak to</p> <p>11 this matter.</p> <p>12 MR. STANG: Thank you, Your Honor. James Stang,</p> <p>13 Pachulski Stang Ziehl &amp; Jones for the committee.</p> <p>14 Your Honor, I want to start with where you just</p> <p>15 left off and we say this in our opening opposition. This</p> <p>16 has absolutely nothing to do with the skills, the</p> <p>17 reputation, the integrity of Judges Gonzalez, Cyganowski or</p> <p>18 Mr. Goldin. You focused on -- nothing at all. These people</p> <p>19 are impeccably qualified, but the problem is that the IAC is</p> <p>20 not empowered under New York law to go beyond the role of</p> <p>21 investigator. And you -- these employment applications have</p> <p>22 begged that question from the very beginning and you</p> <p>23 identified this at the first status conference when you</p> <p>24 said, in effect, I wanted to know more about what this</p> <p>25 committee is. And after several pleadings, we all have</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 gotten down to two sentences from the New York -- from New<br/>2 York law -- as to how this matter should be decided. And as<br/>3 counsel pointed out, it's under subsection (e) of section<br/>4 712 of the non-profit corporation law. There is no<br/>5 question, no debate -- it would be a physical impossibility<br/>6 for the IAC to be a committee of the board. The only thing<br/>7 it can be is a committee of the corporation, and the statute<br/>8 is clear. No such committee shall have the authority to<br/>9 bind the board.</p> <p>10 And, in fact, if you go back to the charter which<br/>11 I will try to pull up -- I'm not good with multiple screens<br/>12 -- but the charter in fact says, and this is an exhibit to<br/>13 the employment applications and this is the -- at docket 60,<br/>14 Your Honor. It's 60, hyphen 3, page 25 of 49. Go down to<br/>15 the --</p> <p>16 THE COURT: Hold on, Mr. Stang. Let me try to --<br/>17 let me catch up with you.</p> <p>18 MR. STANG: Sorry. Sorry, Your Honor.</p> <p>19 THE COURT: The charter is Exhibit B to the Goldin<br/>20 application?</p> <p>21 MR. STANG: I'm showing it as Exhibit -- I'm in<br/>22 the Otterbourg application, Your Honor, which is docket 60.<br/>23 It is Exhibit -- across the top where it shows what -- you<br/>24 know, the docket number, it says, Exhibit C and it says page<br/>25 25 of 49.</p> | <p style="text-align: right;">Page 44</p> <p>1 in favor of the Diocese to pursue to such claims including<br/>2 renegotiation -- well, action -- including commencement of<br/>3 litigation on behalf of the Diocese. So the charter --</p> <p>4 MR. STANG: Your Honor, I read that. I'm sorry.</p> <p>5 THE COURT: Yep. Go ahead.</p> <p>6 MR. STANG: I read that and I understand what it<br/>7 says. But they -- it can't do that. The board cannot<br/>8 circumvent New York law.</p> <p>9 THE COURT: But whoever (indiscernible) I'm sorry.<br/>10 Whoever is typing, please put your phone on mute.<br/>11 Everybody, please, put your phones on mute unless you're<br/>12 talking to me. Thank you.</p> <p>13 MR. STANG: The board -- thank you -- the board<br/>14 can only do what New York law allows it to do. And you're<br/>15 right. Paragraph 3 goes beyond what New York law allows the<br/>16 board to do in a committee structure. This is, to me,<br/>17 really clear. It can only be one of two things: the<br/>18 committee of the board, which we know this -- the IAC -- is<br/>19 not and a committee of the corporation.</p> <p>20 When the debtor said in its original -- or sorry -<br/>21 - when the employment application said it's a committee of<br/>22 the debtor. It's a special committee. It's really<br/>23 sidestepping the issue. It begs the question of what -- or<br/>24 it doesn't really answer the question -- what is the IAC?<br/>25 So as a committee of the corporation, it was certainly</p>  |
| <p style="text-align: right;">Page 43</p> <p>1 THE COURT: Okay. Hold on. Let me catch with<br/>2 you, please.</p> <p>3 MR. STANG: Okay.</p> <p>4 THE COURT: Okay. I'm with you. Go ahead. Thank<br/>5 you.</p> <p>6 MR. STANG: And so if you go to that -- to the<br/>7 bottom of roman numeral II which is captions, duties,<br/>8 responsibilities, and authorities, subsection A has four<br/>9 subparts and the last one really highlights the relationship<br/>10 of this committee to the debtor. Communicate its<br/>11 investigative findings and analysis with the board -- which<br/>12 has been done -- and make such recommendations -- I want to<br/>13 underscore recommendations -- for addressing any such<br/>14 findings and analysis as it deems appropriate.</p> <p>15 Now the -- this really highlights that this entity<br/>16 -- the committee of the corporation -- has restrictions of<br/>17 what it can do. I don't know if that's what they were --<br/>18 what they were intending --</p> <p>19 THE COURT: But Mr. Stang --</p> <p>20 MR. STANG: Yes.</p> <p>21 THE COURT: -- let me direct your attention to<br/>22 A(3).</p> <p>23 MR. STANG: Yes. I understand.</p> <p>24 THE COURT: In the (indiscernible) committee<br/>25 decides that any transaction give rise to a colorable claim</p>   | <p style="text-align: right;">Page 45</p> <p>1 appropriate for it to investigate the avoidance transactions<br/>2 that have been highlighted by Mr. Feldman, but that's as far<br/>3 as it can go.</p> <p>4 So, to me, the real question -- and this is really<br/>5 the focus of Mr. Feldman's presentation and I think the<br/>6 debtor's -- which is, we have spent -- we meaning the debtor<br/>7 -- I think it's close to \$2 million on this investigation<br/>8 between the fees to the IAC members, the fees paid to<br/>9 Otterbourg, and the fees paid to the Goldin firm. And I<br/>10 suspect and you have said this or intimated it, at least I<br/>11 read it as -- between the lines -- how do we preserve the<br/>12 value of this investigation? How do we stop throwing the<br/>13 baby out with the bath water?</p> <p>14 And I think the answer is to that is really<br/>15 simple. They complete their investigation. Maybe they have<br/>16 completed it. It sounds like they have, but I'm not going<br/>17 to speak for the IAC on that regard, and then they work with<br/>18 the appropriate party -- whoever that may be -- to pursue<br/>19 through negotiation or if need be, litigation, the<br/>20 resolution of these claims.</p> <p>21 The debtor said in its pleadings that the<br/>22 committee is trying to turn this into a standing motion and<br/>23 we're not. This is not what's before you. We're not<br/>24 pretending it is. Now the Diocese has said repeatedly that<br/>25 it was so conflicted on these -- on this investigation and</p> |

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| <p>1 the other responsibilities of the IAC that it needed to have<br/>2 an independent committee. Maybe down the road that will be,<br/>3 in part, a basis for a standing motion, but we're not there<br/>4 yet.</p> <p>5 So how do we keep the value of what the Otterbourg<br/>6 firm, Mr. Goldin's firm, and the IAC have done? We have<br/>7 asked in our discovery requests for information about these<br/>8 -- basically, the IAC's tasks. We would -- we're not asking<br/>9 the IAC to be disbanded. We would go to the IAC and ask to<br/>10 consult on their investigation. And so if you look at the<br/>11 employment order that has been proposed, there are parts of<br/>12 it which are absolutely fine from the perspective of the<br/>13 committee.</p> <p>14 What's not okay from our perspective are the<br/>15 provisions, and I think in the application, if you go up to<br/>16 the body of it, Your Honor, because the order just says<br/>17 motion granted. But if you go to the body of the applicant,<br/>18 and I'm in the Otterbourg application, Your Honor, and this<br/>19 is at page --</p> <p>20 THE COURT: Okay, what page?</p> <p>21 MR. STANG: Let's see, I'm at Document 60-2, it is<br/>22 60(b) -- I'm sorry, Exhibit B, Page 407.</p> <p>23 THE COURT: Yes, I'm there.</p> <p>24 MR. STANG: It says, continuing the IAC's review.<br/>25 And determine whether it gives rise. Now, maybe that's been</p>  | <p>1 or Mr. Geremia talking. I was quoted a provision of the New<br/>2 York Not For Profit Corporation Law that was characterized<br/>3 as being dispositive of your objection. Do you recall that?</p> <p>4 MR. STANG: Yes, Your Honor.</p> <p>5 THE COURT: Can you run -- can you run back<br/>6 through that and explain to me why you disagree with that<br/>7 argument or statement?</p> <p>8 MR. STANG: Well, because I think they were -- I<br/>9 don't know, they were being a little vague in their words.<br/>10 Just, we can all turn to Section 712(e). There are two<br/>11 things. There's a committee of the board, and there's a<br/>12 committee of the corporation. That's what E says. And the<br/>13 second sentence of E says, no such committee shall have the<br/>14 authority to bind the board.</p> <p>15 THE COURT: I'd like to read along with you. Can<br/>16 you tell me where I find this? Is this in your surreply?</p> <p>17 MR. STANG: Yes, Your Honor. It is footnoted on<br/>18 Page 4, 4 of 8. It is in Paragraph 5.</p> <p>19 THE COURT: Paragraph 5.</p> <p>20 MR. STANG: And it's the last -- the whole<br/>21 paragraph addresses it, but the last sentence.</p> <p>22 MR. GEREMIA: No, I don't believe it's quoted in<br/>23 there, but that could be part of the issue.</p> <p>24 MR. STANG: Well, it's footnoted.</p> <p>25 THE COURT: I'm looking at this paragraph, and let</p>   |
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| <p>1 finished, maybe it hasn't. That is an appropriate thing for<br/>2 a committee of the corporation to do. B and C, which are<br/>3 pursue the claims, and then prepare the necessary memorandum<br/>4 related to pursuing the claims, we think is beyond -- what<br/>5 I'm saying, is beyond the scope of the IAC should be doing,<br/>6 and therefore beyond the scope of what its professionals<br/>7 should be doing.</p> <p>8 And then D, E and F, taken within the context of B<br/>9 and C being stricken, are also okay. So the investigation,<br/>10 I don't know how much is left. I couldn't tell from what<br/>11 Mr. Feldman said, how -- I thought you had asked him, what<br/>12 percentage is still outstanding, but whatever. If they're<br/>13 done, they're done. If they're not done, the expenses and<br/>14 cost of completing it will be subject to fee applications<br/>15 and will be subject to a reasonableness standard.</p> <p>16 But that's as far as it can go. And whether the<br/>17 Debtor picks up the issue of pursuing these through properly<br/>18 hired professionals, or the committee does it, or some other<br/>19 person appointed by the Court does it, that's not what we're<br/>20 talking about today. But we don't lose the value of what<br/>21 they've done.</p> <p>22 THE COURT: Okay, I have a number of questions,<br/>23 maybe that are not all just for you. But --</p> <p>24 MR. STANG: You can start with me.</p> <p>25 THE COURT: I can't recall if it was Mr. Feldman</p> | <p>1 me just -- I just want to get this point very clear. And<br/>2 I'm looking at it, it's the surreply that the committee<br/>3 filed. it's entered at Docket 159.</p> <p>4 MR. STANG: Yes, Your Honor.</p> <p>5 THE COURT: Right? Am I at the right spot? Okay,<br/>6 and it said it's a requirement that a committee of a board<br/>7 contains three directors. It's not (indiscernible) rule, et<br/>8 cetera, et cetera, under New York law. A not-for-profit<br/>9 corporation's directors are charged with managing this<br/>10 corporation. Nothing in the New York Not For Profit Law<br/>11 permits committees of non-directors to bind the board with<br/>12 their decisions, merely because such non-directors may have<br/>13 contractual, et cetera.</p> <p>14 Okay, and then you drop a footnote to Section<br/>15 712(e), while the law permits the creation of committees of<br/>16 non-directors, such committees are not permitted to bind the<br/>17 board with their decisions, and therefore can assume only<br/>18 advisory roles.</p> <p>19 MR. STANG: That's it, Your Honor.</p> <p>20 THE COURT: Okay. All right. Now, my next<br/>21 question is, so when you took me through the Otterbourg<br/>22 application, so I'm a little confused. Because what you're<br/>23 suggesting is that your issue is not with the continuation<br/>24 of the IAC itself, and continuing to do work within the<br/>25 scope of investigating the claims. But you're drawing the</p> |



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| <p style="text-align: right;">Page 50</p> <p>1 line at hiring the professional firms to pursue the claims,<br/>2 right?</p> <p>3 MR. STANG: Yes, Your Honor. I think where maybe<br/>4 some of the confusion is, they -- the Debtor insists that<br/>5 this is a committee of the board. And what we have said is,<br/>6 you can call it what you want, but it isn't a committee of<br/>7 the board. You can keep on calling it that if you want, but<br/>8 it's only -- it can only exist as a committee of the<br/>9 corporation. Calling it committee of the board doesn't make<br/>10 it such. The law tells you what it is.</p> <p>11 And because the membership doesn't, you know,<br/>12 isn't in accordance with the statute, it can only be one<br/>13 other thing. And that has advisory powers, which is what we<br/>14 think in the employment order would be permitted. Again,<br/>15 we're not seeking to disband the IAC, we're challenging the<br/>16 characterization of it as a committee of the board.</p> <p>17 MR. GEREMIA: Your Honor, if I may?</p> <p>18 THE COURT: Yes, go ahead.</p> <p>19 MR. GEREMIA: It is a committee of the diocese.<br/>20 That is clear under 712(e). And the whole reason for this -<br/>21 -</p> <p>22 THE COURT: Now, you -- do take me back. You show<br/>23 me where -- what that is based on.</p> <p>24 MR. GEREMIA: That's based on 712(e), that we were<br/>25 just reading from. And I don't know if Your Honor has it in</p>   | <p style="text-align: right;">Page 52</p> <p>1 we're really running around in a circle here. In the<br/>2 special committee cases that are well familiar to me and to<br/>3 all of you, the special committee is not a special committee<br/>4 of the corporation; it is a special committee of the board.</p> <p>5 Mr. Stang is telling me that this is a committee<br/>6 of the corporation, and you've now just told me that it is a<br/>7 committee of the diocese. So the diocese here is the<br/>8 corporation. So this is not a special committee of the<br/>9 board. And based on those --</p> <p>10 MR. GEREMIA: It's a committee of the diocese --<br/>11 sorry.</p> <p>12 THE COURT: And based on 712(e), it can only<br/>13 advise. That's the language that I just read from the<br/>14 statute.</p> <p>15 MR. GEREMIA: That is, I think I have two<br/>16 responses to that point, because that's where the objection<br/>17 has come down to, essentially, is the advisory<br/>18 characteristic of the IAC. And number one, that is at best<br/>19 a hypothetical question, but really a moot question, because<br/>20 the diocese has already made clear that it is going to<br/>21 pursue these claims, and that it will authorize the IAC to<br/>22 pursue these claims. So the notion that the board is going<br/>23 to pursue the claims --</p> <p>24 THE COURT: But the statute says -- I'm sorry,<br/>25 hold on, hold on. 712(e) says, "Committees other than</p>  |
| <p style="text-align: right;">Page 51</p> <p>1 front of you, because it wasn't quoted in the surreply<br/>2 letter, I can read --</p> <p>3 THE COURT: Is it in your -- is it in your letter?</p> <p>4 MR. GEREMIA: No, Your Honor. Our letter was<br/>5 submitted before the surreply. This came up only in<br/>6 connection with the surreply, which we have not responded to<br/>7 in writing.</p> <p>8 THE COURT: I'm sorry. Okay, bear with me. I<br/>9 apologize. I would like to pull up a document where I can<br/>10 read what you're about to quote back to me. Because you<br/>11 folks are not on the same page here. Mr. Stang is very<br/>12 clearly saying that this is a committee of the corporation,<br/>13 and you are very clearly saying that it's a committee of the<br/>14 board. So let me --</p> <p>15 MR. GEREMIA: I'm sorry, it's a committee -- I<br/>16 think it's a distinction without a difference. It's a<br/>17 committee of the diocese. The basis for the objection is<br/>18 this is not the diocese asking for these professionals, and<br/>19 that is simply not true. It's the diocese -- it's a<br/>20 committee of the dioceses that is asking for these<br/>21 professionals. And is in pertinent respect, no different<br/>22 than multiple situations where special committees of Debtors<br/>23 are permitted to have professionals to investigate and<br/>24 pursue avoidance claims, and that's what this is about.</p> <p>25 THE COURT: But you know, we're really chasing --</p> | <p style="text-align: right;">Page 53</p> <p>1 committees of the board" -- so we now seem to agree that<br/>2 this IAC is not a committee of the board. Which, you both<br/>3 just said it. It's a committee of the corporation, or it's<br/>4 a committee of the diocese. So it's not a committee of the<br/>5 board. "Committees other than committees of the board,<br/>6 created by the board or by the members shall be committees<br/>7 of the corporation. No such committee shall have the<br/>8 authority to bind the board." And now what you're telling<br/>9 me is, never mind what the statute says, the IAC can bind<br/>10 the board.</p> <p>11 MR. GEREMIA: I'm not saying never mind what the<br/>12 statute says, Your Honor, I'm saying it's a moot question,<br/>13 because the diocese, as we've already conveyed, has accepted<br/>14 the recommendation of the IAC and intends to pursue these<br/>15 claims. And it wants professionals to do that, which is, it<br/>16 is frankly, the diocese's fiduciary duty to investigate<br/>17 these claims. And Mr. Stang started by saying we're not in<br/>18 power to go --</p> <p>19 THE COURT: But look at (indiscernible). This is,<br/>20 we're twisting -- we're being twisted into a pretzel here.<br/>21 I mean, let's just play out the strings. Litigation gets<br/>22 very ugly, and gets very intense, and then you get to the<br/>23 point where there's the possibility of a settlement.</p> <p>24 MR. GEREMIA: Yes.</p> <p>25 THE COURT: And (indiscernible)</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 MR. GEREMIA: The diocese will be the plaintiff in<br/>2 that litigation.</p> <p>3 THE COURT: But the diocese will have been the<br/>4 transactor in that transaction. The diocese will have been<br/>5 -- will have been the transferor in that transaction that<br/>6 will have been authorized by current or former members of<br/>7 the diocese board, or the diocese management.</p> <p>8 MR. GEREMIA: And I think that's often the case in<br/>9 avoidance actions, that you've got a Debtor that is the<br/>10 plaintiff on one side of the V, seeking to avoid<br/>11 transactions, in many cases, with affiliates. I mean,<br/>12 that's no different than the --</p> <p>13 THE COURT: Well --</p> <p>14 MR. GEREMIA: Than a fairly typical scenario in<br/>15 which an avoidance action is brought, and that is why we<br/>16 established the IAC as a conflict-free committee to<br/>17 investigate these claims. I mean, Mr. Stang began by saying<br/>18 --</p> <p>19 THE COURT: I need to go back to Mr. Stang, if you<br/>20 will. Please just pause for a moment.</p> <p>21 MR. GEREMIA: I will.</p> <p>22 THE COURT: Mr. Stang, so going back to our kind<br/>23 of parsing through the Otterbourg application, to your<br/>24 knowledge -- maybe I should have asked Mr. Feldman or Mr.<br/>25 Geremia this. Has the IAC prepared a report, you know, in</p>   | <p style="text-align: right;">Page 56</p> <p>1 work, and it's identified colorable claims that the diocese<br/>2 wishes to pursue for the benefit of the victims. So that's<br/>3 all as it should be.</p> <p>4 And we're getting -- we are discussing with great<br/>5 degree of difficulty, and I hope obvious care, whether or<br/>6 not the Otterbourg firm and the Goldin firm should be the<br/>7 professionals to pursue that litigation. And it's<br/>8 definitely a square peg in a round hole, from my<br/>9 perspective. And nobody wants to waste effort, nobody wants<br/>10 to deplete assets of the estate. Certainly I'm not<br/>11 interested in having the committee redo, you know, work. I<br/>12 know the committee has an independent obligation to do its<br/>13 own review. I respect that; that's fine.</p> <p>14 But we have to come up with an answer for how<br/>15 these claims get pursued. It's not going to be the Jones<br/>16 Day firm, that's clear, and we're not going to leapfrog<br/>17 into, you know, into the standing issue. You know, and<br/>18 there's a practical impediment for that, because as you well<br/>19 know, one of the factors there is whether or not the Debtor,<br/>20 the corporation has refused to bring the action. So that's<br/>21 just not going to be true, because they want to bring the<br/>22 action. So what do we do?</p> <p>23 MR. STANG: Well, Your Honor, this is what I<br/>24 think. Well, first of all, I don't know if it's just their<br/>25 refusal to -- it can be also their inability to. But I want</p>   |
| <p style="text-align: right;">Page 55</p> <p>1 the nature of a report that, for example, an examiner would<br/>2 prepare?</p> <p>3 MR. STANG: Your Honor, you're asking me that<br/>4 question, or Mr. Feldman?</p> <p>5 THE COURT: Yeah, I mean, do you know? If not, I<br/>6 can just ask Mr. Feldman.</p> <p>7 MR. STANG: I believe in one of the pleadings, it<br/>8 was Mr. Feldman's response, or Otterbourg's response. They<br/>9 say they have informed the diocese that have concluded it's<br/>10 a colorable claim, but otherwise have not given it a report<br/>11 of their findings. But Mr. Feldman would know better, but<br/>12 that's my recollection of the pleadings.</p> <p>13 THE COURT: Okay. And hypothetically, and again,<br/>14 I find it useful to use somewhat exaggerated hypotheticals<br/>15 to see if I can get the right answer. Hypothetically, if I<br/>16 were to say to you that Mr. Stang, what would you think of<br/>17 my selecting a firm to pursue these claims, or what would<br/>18 you think of a process in which all interested parties<br/>19 suggested other professionals to pursue these claims?</p> <p>20 MR. STANG: It's -- well, I hadn't really thought<br/>21 about the professional part of it. Again, I'm concerned<br/>22 about the baby with the bathwater problem. But to answer<br/>23 your question --</p> <p>24 THE COURT: Well, I mean, that's the point here,<br/>25 right? The point is that the IAC has done a lot of valuable</p> | <p style="text-align: right;">Page 57</p> <p>1 to make a distinction between who brings the action, who the<br/>2 plaintiff is, and who the plaintiff's professionals are.</p> <p>3 And what the Debtors tried to do here is not address the<br/>4 first issue, but only address the second. And that was the<br/>5 problem.</p> <p>6 And that's why from the beginning, everyone, you<br/>7 know, we said you queried, you know, what is this thing, the<br/>8 IAC? So obviously you can employ, under the federal rules<br/>9 of evidence, your own expert. You could appoint an examiner<br/>10 with expanded powers, if that's something that -- if that's<br/>11 a concept that you buy into. I don't know, I haven't<br/>12 researched your opinions to see if you think such a unicorn<br/>13 exists. You could appoint a trustee, perhaps, with limited<br/>14 authority, or you could appointment -- the committee could<br/>15 be asked to be the one doing it on behalf of the Debtor.<br/>16 I'm not trying to preclude any of those things at today's<br/>17 hearing.</p> <p>18 But there are people who can be appointed, or<br/>19 entities that can be appointed who can pursue this<br/>20 litigation without the conflicts that the Debtor has, which<br/>21 it admits it has, and without using an entity that doesn't<br/>22 has the power, under state law, to do what they've been<br/>23 charged with. So I think there are alternatives, and<br/>24 whether Otterbourg and the Goldin firm are unable to<br/>25 represent that entity or person, we'd have to see what</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 conflicts might exist by virtue of their prior<br/>2 representation. I wouldn't on today's call preclude that, I<br/>3 just haven't analyzed it.<br/>4 THE COURT: I'm sorry, I lost you at the very end.<br/>5 MR. STANG: Oh, if the question is, I can appoint<br/>6 Ms. X, and can the Otterbourg firm and the Goldin firm<br/>7 represent them in pursuing the litigation, you know, the<br/>8 answer is I don't know that. I don't want to preclude it.<br/>9 I just haven't thought about what conflicts might exist by<br/>10 virtue of the representation of the IAC. I just don't know.<br/>11 I'm not telling you we have to (indiscernible) new people.<br/>12 THE COURT: Let me try it again, because I'm<br/>13 confused. If the issue is not the continuing existence of<br/>14 the IAC, but rather the firm that represents the IAC in<br/>15 pursuing the claims on behalf of the diocese, then why would<br/>16 we be continuing to talk about the Otterbourg firm? IN<br/>17 other words --<br/>18 MR. STANG: I'm sorry, Your Honor. I think I was<br/>19 confused. But I don't think under any circumstance the IAC<br/>20 as it's presently created can pursue the litigation. Now,<br/>21 can you turn around and say I'm going to appoint the IAC as<br/>22 an examiner, with expanded powers to pursue the litigation?<br/>23 I don't know. Can I appoint the IAC as a trustee, in<br/>24 effect, to pursue the litigation? You know, I just -- by<br/>25 virtue of what they've done so far, what their relationship</p> | <p style="text-align: right;">Page 60</p> <p>1 THE COURT: Sure.<br/>2 MR. FELDMAN: I just want to clarify one thing on<br/>3 the record. I think Your Honor asked a question about<br/>4 whether there had been a report, and Mr. Stang gave an<br/>5 answer, which I don't think was wholly accurate, and perhaps<br/>6 it was obviously --<br/>7 THE COURT: Okay.<br/>8 MR. FELDMAN: So in, I think it's July, maybe<br/>9 August of 2020, there was a report that was delivered by the<br/>10 IAC, a written report by the IAC to the diocese. The -- I<br/>11 don't think our papers denied that. I think we said we<br/>12 communicated our findings, or the IAC communicated its<br/>13 findings and deliberations to the diocese. I don't think<br/>14 they ever said that there was no report, because there is a<br/>15 report, and I didn't want the Court to be misled.<br/>16 Not saying Mr. Stang was misleading the Court. I<br/>17 apologize if it came across that way, (indiscernible) that<br/>18 the answer was not wholly correct, so I just wanted to<br/>19 clarify the record for that purpose. Thank you.<br/>20 THE COURT: All right, thank you very much.<br/>21 MR. FELDMAN: I know you asked Mr. Zipes.<br/>22 THE COURT: Okay, all right. Thank you, thank<br/>23 you. Is everybody doing okay? Do we need to take -- you<br/>24 know, we're all on the phone here. If we need to take a<br/>25 break at any point, someone should let me know. All right,</p>   |
| <p style="text-align: right;">Page 59</p> <p>1 to the diocese has been, as a committee and a corporation, I<br/>2 haven't thought that through.<br/>3 But it is clear to me that you had the authority<br/>4 to appoint someone or something to pursue the litigation.<br/>5 That's who the plaintiff will be. Again, whether it can be<br/>6 the IAC is a greater conversation, that I'm not going to<br/>7 discuss.<br/>8 THE COURT: So I could appoint the IAC or one or<br/>9 more members of the IAC as an examiner. And then that<br/>10 person could retain his or her own counsel. Problem solved?<br/>11 MR. STANG: I have not -- well, I don't know. I<br/>12 have not thought through, for today's hearing, whether the<br/>13 IAC or any of its members could qualify under the code for<br/>14 that position. I haven't thought it through. But, I see<br/>15 where you're going, and the answer is, I think it's maybe.<br/>16 I just haven't thought through whether the relationship<br/>17 (indiscernible) for the Debtor to date precludes that.<br/>18 THE COURT: Okay. Okay, all right, all right.<br/>19 This is productive. Let me give Mr. Zipes an opportunity,<br/>20 because I think his -- the U.S. Trustee's objections are a<br/>21 horse of a different color, so to speak. So Mr. Zipes?<br/>22 MR. FELDMAN: Your Honor --<br/>23 THE COURT: Good morning.<br/>24 MR. FELDMAN: Your Honor, this is Peter Feldman.<br/>25 Can I interrupt? This is Peter -- may I interrupt?</p>   | <p style="text-align: right;">Page 61</p> <p>1 Mr. Zipes, may I hear from you, please?<br/>2 MR. ZIPES: Yes, good afternoon, Your Honor. Good<br/>3 to hear your voice, and I hope to see you soon. First of<br/>4 all, I want to echo the statements that were made about Mr.<br/>5 Goldin, and Ms. Cyganowski, and Judge Gonzalez, about their<br/>6 qualifications. And this is not about their qualifications<br/>7 in any way. And I do appreciate Mr. Stang's comments as<br/>8 well.<br/>9 As the Court said, our objection is maybe of a<br/>10 different stripe. I did want to -- I raised my hand at<br/>11 certain points during the discussion, I didn't want to<br/>12 interrupt people. I just wanted to make the point that<br/>13 although it wasn't entirely clear in the motion to retain<br/>14 professionals, what their exact role as within the Debtor, I<br/>15 think it is clear now that they are, at least from the<br/>16 Debtor's point of view, that they are diocese, part of the<br/>17 diocese.<br/>18 And I'll go even further than that, the Debtors<br/>19 have stated in, as admissions, Judge Gonzalez's statement in<br/>20 his declaration, that the IAC is a special committee of the<br/>21 board. They specifically have been stating that they're a<br/>22 creature of the board here, and I do appreciate the<br/>23 statements that generally, I think if this was not a<br/>24 religious corporation, there would be no question, but that<br/>25 they would be independent, they would have been retained as</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 independent directors of the board to investigate, and<br/>2 everything that flows from that.<br/>3 But Your Honor, the U.S. Trustee presents a<br/>4 statutory argument, and the matters before the Court here<br/>5 are the retention of professionals of the Debtor. These are<br/>6 -- these proposed functions, whatever you want to call them,<br/>7 are core duties of the Debtor. They're not painting the<br/>8 walls of, you know, the grounds of the church or anything<br/>9 like that. These are suing and being sued, 323 of the<br/>10 Bankruptcy Code, and there is the question of whether they<br/>11 are insiders as well. It is pretty clear that insiders of<br/>12 the corporation, under the Bankruptcy Code, 101 defines it<br/>13 as director -- among other things, director, officer, or<br/>14 person in control.<br/>15 So there is a lot of discussions right now about,<br/>16 are they directors, where do they fit in? They're in<br/>17 control, because they have the ability to sue on behalf of<br/>18 the Debtor on significant matters. These are matters that<br/>19 are of great concern to all the parties who are involved<br/>20 with the case. And they're not insignificant, and they go<br/>21 to the core of what the Debtor really does in a bankruptcy<br/>22 case.<br/>23 So the -- we think that it's very clear that there<br/>24 is a disinterest in this issue here. The board members are<br/>25 insiders of the Debtor, and their firms are being used to</p>  | <p style="text-align: right;">Page 64</p> <p>1 various parties.<br/>2 THE COURT: Okay. All right, thank you. I mean,<br/>3 I do think that -- someone's typing. Please put your phone<br/>4 on mute. I do think that the U.S. Trustee makes important<br/>5 points here, in the alternative that members of the firms are<br/>6 statutory insiders, and therefore the applicants aren't<br/>7 disinterested, and also makes the point briefly, but I think<br/>8 interestingly that notwithstanding their designation by the<br/>9 diocese as independent contractors, that they would be<br/>10 considered employees under an ordinary definition.<br/>11 There's been a lot of talk of the record today<br/>12 about how much power and authority that the individuals<br/>13 would have, which certainly begins to make them feel -- make<br/>14 it feel as if, for the purposes of pursuing these claims,<br/>15 these individuals are indeed persons in control of the<br/>16 Debtor, and are functioning as employees of the corporation.<br/>17 So, that's another level of complexity here. I'm<br/>18 happy to have Mr. Geremia, or Mr. Feldman, or Ms. Ball<br/>19 respond to that if you like, but that definitely has my<br/>20 attention here. It's another way in which I'm presented<br/>21 with a square peg in a round hole.<br/>22 MR. GEREMIA: Thank you, Your Honor. I can<br/>23 address the trustee's objection. What we might do -- I<br/>24 mean, the trustee and the committee counsel have suggested a<br/>25 number of things that have not been framed by these</p>  |
| <p style="text-align: right;">Page 63</p> <p>1 pursue actions on behalf of the Debtor. The Debtor didn't<br/>2 really address that point. They've been addressing Mr.<br/>3 Stang's points. But this is, again, this is a statutory<br/>4 argument. We can only go with the motions as they're filed,<br/>5 the information that's provided to us. We try to get<br/>6 further information, but this is a highly unusual situation,<br/>7 and directors are -- they are insiders of the Debtor.<br/>8 They're asking their firms to be retained.<br/>9 One fact here, although it's not central it our<br/>10 argument, it does appear that we're at a cleavage point.<br/>11 The investigations have been done. So there are other<br/>12 alternatives, as this Court has been mentioning as<br/>13 possibilities. And it's not as though we're stopping an<br/>14 investigation that's in its tracks at this point. We've<br/>15 reached a certain point.<br/>16 Your Honor, my only other point, because I know<br/>17 you read the papers and everything else, is that if the<br/>18 Court is inclined to go a different rule, there were some<br/>19 statements that the Court could do X or Y, and I don't think<br/>20 that that's precluded, but there are, under 1104,<br/>21 appointment of examiners and appointment of trustees, those<br/>22 have certain procedures, obviously, that involve the U.S.<br/>23 Trustee's office, and I just wanted to state that as well.<br/>24 So, Your Honor, those are the central points I wanted to<br/>25 make to you. I think the record has been clarified by the</p> | <p style="text-align: right;">Page 65</p> <p>1 applications or the objections, you know, the notion of the<br/>2 Court appointing its own expert, an examiner, a trustee,<br/>3 those issues have not been fleshed out. We have previously<br/>4 offered and discussed with committee counsel the notion of<br/>5 trying to work out an agreement, how the IAC might interact<br/>6 with the UCC. We have not yet been provided any guidance<br/>7 with that, with respect to that issue.<br/>8 One thing, and we hear Your Honor about the<br/>9 committee's objections, that we have discussed with the U.S.<br/>10 Trustee is the notion that the diocese and the IAC will<br/>11 commit to reporting to the Court if the diocese is not going<br/>12 to accept any recommendation of the IAC. In that respect,<br/>13 it's not that much different than the typical situation in<br/>14 which a special committee is established to investigate<br/>15 avoidance claims, and then that committee reports back to<br/>16 the board, and the report and the board either accept that<br/>17 recommendation or not.<br/>18 We will commit to conveying to the Court, if the<br/>19 Debtor is not going to accept the IACs recommendation. As<br/>20 we've already submitted to you today, that is not going to<br/>21 happen. The Debtor is committed to pursuing these claims.<br/>22 There is no question on this record that they will be<br/>23 pursued, and the diocese would be the plaintiff in those<br/>24 avoidance actions. The overall point is that it may make --<br/>25 it may be fruitful for us to go offline and discuss with the</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 trustee and the committee how this would all be set up,<br/>2 because a number of issues have been raised today that<br/>3 really weren't addressed by the papers.<br/>4 On the specific issues of the trustee's<br/>5 objections, Your Honor raised the point of employees and<br/>6 persons in control. I think the case law and persons in<br/>7 control is fairly well-established, that it has to be<br/>8 extensive control over the Debtor's day-to-day operations,<br/>9 and these IAC members simply don't have that. They have a<br/>10 narrow charge with respect to past transactions. Since<br/>11 2014, two affiliates over threshold amount, that --<br/>12 THE COURT: Yes, I agree with you. I agree with<br/>13 you. Again, this is, you know, this is a very unique set of<br/>14 facts that we have, but I don't disagree with you in terms<br/>15 of the ordinary and the meaning of those words in the<br/>16 statute.<br/>17 I want to make one more point, that frankly I<br/>18 thought Mr. Stang would make, but I'm going to make it, and<br/>19 I'm not putting words in this mouth, but these are just an<br/>20 observation that I want to make. So first principles for me<br/>21 are number one, there's obviously been a great deal of<br/>22 important, thoughtful and difficult work that's been done,<br/>23 and it behooves us all to find a way to take advantage of<br/>24 that, and not have to repeat that work.<br/>25 Secondly, we're all struggling, and it's almost --</p>  | <p style="text-align: right;">Page 68</p> <p>1 think outside the box. But I think, you know, in a<br/>2 situation where, you know, I often say you know, there's an<br/>3 expression in baseball, the tie goes to the runner, so here<br/>4 I think, you know, in a close case, one thing that we ought<br/>5 to put on the scale, thumb on the scale is the appearance of<br/>6 it, and making sure that it's absolutely squeaky-clean and<br/>7 provides the victims with the feeling that it's a really<br/>8 good process that's being conducted in a way that serves<br/>9 their interest, and serves the interest of this case.<br/>10 I am intrigued, and admit that it's one of the<br/>11 things that I was thinking about coming into this hearing as<br/>12 to whether or not using the device, or the role of someone,<br/>13 an examiner, or someone like an examiner, possibly, whether<br/>14 that would be one or more of the members of the IAC, and<br/>15 then looking to a new firm, to pursue the litigation,<br/>16 whether that doesn't check a lot of the boxes, and<br/>17 accomplish a lot of the goals that I would like to<br/>18 accomplish, and that I hope many of you share.<br/>19 So I think it was Mr. Geremia who suggested that<br/>20 perhaps it would be a good idea to take this offline, and<br/>21 let you folks talk, and see what you come up with, and then<br/>22 we can resume the conversation, and then if you come up with<br/>23 something to present that's acceptable to the Court and<br/>24 acceptable to the U.S. Trustee, we could go from there, and<br/>25 if not, I'll render a decision. Was that you, Mr. Geremia</p> |
| <p style="text-align: right;">Page 67</p> <p>1 it will almost be two hours, with, you know, it's like a law<br/>2 school exercise, parsing the words of the statute, trying to<br/>3 deal with the unique facts and challenges that this<br/>4 religious nonprofit presents us with and how to overlay that<br/>5 into the requirements of the code. And we're having a hard<br/>6 time, I'm having a hard time making it fit. You know, I<br/>7 feel like I'm just trying to jam apart into a machine and<br/>8 it's really not exactly the right part, and the right fit.<br/>9 But finally, I don't want to lose sight of the<br/>10 fact that one of the important goals of this case is to<br/>11 provide as impeccable a process as is possible, for the<br/>12 benefit of the victims. That's the point of this. And also<br/>13 to enable the diocese to emerge from Chapter 11, and<br/>14 continue its mission and all the important work that it does<br/>15 on behalf of so many people. And because of that, it's<br/>16 important for there not to be any question mark, any cloud,<br/>17 any level of discomfort about how it is that we go about<br/>18 creating a recovery pool, and that includes pursuing<br/>19 litigation that involves transactions in which the diocese<br/>20 was a party. And that's important.<br/>21 So that to the extent that this is a close call,<br/>22 and I certainly appreciate that the Jones Day folks have<br/>23 done an excellent job in advocating for why I shouldn't<br/>24 think that it's a close call, along with Mr. Feldman, and<br/>25 Mr. Stang has been creative, and evidence of willingness to</p> | <p style="text-align: right;">Page 69</p> <p>1 who suggested that you still need to talk? Go ahead.<br/>2 MR. GEREMIA: Yes, I did. I think that will be<br/>3 fruitful.<br/>4 THE COURT: Okay. Mr. Stang, is that okay --<br/>5 MR. GEREMIA: (indiscernible) I'm sorry, go ahead.<br/>6 THE COURT: Go ahead, I'm sorry. No, go ahead,<br/>7 I'm sorry.<br/>8 MR. GEREMIA: I was going to say, that should be<br/>9 fruitful. And in the event it's not, we would just ask for<br/>10 the opportunity to submit a response to the surrepley,<br/>11 because some of the issues that we've confronted today have<br/>12 come about as a consequence of the fact that the diocese<br/>13 hasn't submitted a written response to Your Honor, to that<br/>14 surrepley. But I think we should be able to work out the<br/>15 issues offline, talking to the trustee and the committee<br/>16 counsel. So hopefully will not come to that.<br/>17 THE COURT: Okay, all right. That's fine, with<br/>18 respect to the, I guess it's a sur-surrepley. And I'm<br/>19 hopefully that you'll have some fruitful discussion. So let<br/>20 me look at the calendar. Would it be useful to all of you<br/>21 to have a date and a time certain to return, or do you want<br/>22 me to leave it more open-ended? I know there's some urgency<br/>23 in getting this resolved.<br/>24 MR. GEREMIA: Let me defer to Ms. Ball, or Mr.<br/>25 Rosenblum, who have other aspects of the schedule in mind.</p>  |

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| <p>1 THE COURT: Okay, Ms. Ball?</p> <p>2 MS. BALL: Yes, Your Honor. Thank you. I know</p> <p>3 that we have another hearing on the 9th. We'll be here</p> <p>4 anyhow. And not to impose on the Court, but I think that we</p> <p>5 would look to work this out over the intervening period with</p> <p>6 the holiday. I think Mr. Stang has come up with some very</p> <p>7 interesting ideas as to how we can work with the IAC or</p> <p>8 certain of its members in moving forward, and we are -- we</p> <p>9 would like to explore those further, and get back to you.</p> <p>10 And maybe the 9th would be soon enough, given</p> <p>11 intervening events that we're already working on, one of</p> <p>12 them we've somewhat alluded to, which is getting the bar</p> <p>13 date motion on file. But we have a lot to work with UCC on</p> <p>14 in this two-week period.</p> <p>15 THE COURT: You have a lot. You have a lot of</p> <p>16 work -- you have a lot of work on your plate, indeed. My</p> <p>17 only -- and I'm happy to have you come back on the 9th. My</p> <p>18 only concern is this problem of the fact that I'm only one</p> <p>19 person with two wonderful law clerks, and so that if on the</p> <p>20 9th we're going to have a resumed contested hearing on this,</p> <p>21 while we're preparing for preliminary injunction hearing on</p> <p>22 the 10th, we'll be quite busy. But that's okay.</p> <p>23 So if you'd like to take it out to the 9th, that's</p> <p>24 fine, and I could -- you know, obviously as soon as you have</p> <p>25 an indication in the direction that it's going, we'd be</p> | <p>1 taking so much time to help me think through these issues,</p> <p>2 and thank you for the general update on the progress of the</p> <p>3 case. I'm very pleased with how well and expeditiously</p> <p>4 things are moving along. Unless anyone has anything else, I</p> <p>5 think I can let you go get some lunch.</p> <p>6 MAN: Thank you, Your Honor.</p> <p>7 MAN: Happy Thanksgiving to everyone.</p> <p>8 THE COURT: Thank you, thank you.</p> <p>9 MS. BALL: Happy Thanksgiving, Your Honor, and</p> <p>10 thank you.</p> <p>11 THE COURT: Happy Thanksgiving to you all, please</p> <p>12 stay safe. This concludes the hearing.</p> <p>13 (Whereupon these proceedings were concluded at</p> <p>14 12:50 PM)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
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| <p>1 grateful for a heads up.</p> <p>2 MS. BALL: Your Honor, if I may echo what my</p> <p>3 partner, Mr. DiPompeo, said earlier, that I think that he</p> <p>4 has already, we have already undertaken to let you know, and</p> <p>5 we hope Mr. DiPompeo indicated to you that we reach out some</p> <p>6 time next week, so hopefully we will -- we are all going to</p> <p>7 work hard so that the Court does not have that burden on the</p> <p>8 9th and the 10th, actually.</p> <p>9 THE COURT: Okay, all right.</p> <p>10 MS. BALL: And I think he's already suggested that</p> <p>11 he and committee counsel would reach out. Mr. DiPompeo over</p> <p>12 here is still available. I don't think you've picked a day,</p> <p>13 but you suggested well before the 9th, correct?</p> <p>14 THE COURT: Yes, yes. That's fine. I'm just, I'm</p> <p>15 aware of how much you have -- you folks have a lot on your</p> <p>16 plate, and we'll do our part. So whatever it turns out to</p> <p>17 be, we will do. And I again, with all of the burdens that</p> <p>18 everybody is dealing with these days, and I don't want to</p> <p>19 ruin whatever Thanksgiving holiday people manage to be able</p> <p>20 to safely enjoy.</p> <p>21 So, okay. So I've got you on my calendar for</p> <p>22 10:00 on December 9th, I've got you on my cleaner for 10:00</p> <p>23 on December 10th. If you'd like to have a hearing or a</p> <p>24 conference before then, just reach out to Ms. Eisen, and</p> <p>25 we'll make ourselves available. Thank you all so much for</p>  | <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, Sonya Ledanski Hyde, certified that the foregoing</p> <p>4 transcript is a true and accurate record of the proceedings.</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Sonya Ledanski Hyde</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Veritext Legal Solutions</p> <p>21 330 Old Country Road</p> <p>22 Suite 300</p> <p>23 Mineola, NY 11501</p> <p>24</p> <p>25 Date: November 19, 2020</p>  |

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## **EXHIBIT B**

**Brittany M. Michael**

---

**From:** Karen B. Dine  
**Sent:** Tuesday, November 17, 2020 8:12 PM  
**To:** 'Butler, Andrew M.'; Stephens, Eric P.; Ball, Corinne; Geremia, Todd R.; Rosenblum, Benjamin; DiPompeo, Christopher J.; Thomson, Benjamin J.; James Stang; Ilan D. Scharf; Brittany M. Michael  
**Subject:** DRVC Draft Document Requests in connection with Preliminary Injunction Discussions  
**Attachments:** DOCS\_NY-#41475-v4-DRVC\_Document\_Production\_Request.DOCX

Counsel, further to our discussions regarding the extension of the preliminary injunction, we attach a draft of the document request that the Committee is proposing to issue in connection any such extension.

Additionally, below is a list of a number of items specifically addressed at the 341 on which it was agreed there would be follow-up.

Please let us know your questions or comments or if we should set up a call to discuss.

Regards, Karen

[REDACTED]

**Karen B. Dine**

Pachulski Stang Ziehl & Jones LLP

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## **EXHIBIT C**



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James I. Stang

November 19, 2020

310.772.2354  
[jstang@pszjlaw.com](mailto:jstang@pszjlaw.com)

**Via E-mail ([pfeldman@otterbourg.com](mailto:pfeldman@otterbourg.com))**

Peter Feldman, Esq.  
Otterbourg P.C.  
230 Park Avenue  
New York, New York 10169

**Re: In re. The Roman Catholic Diocese of Rockville  
Centre, New York Case No. 20-12345**

Dear Peter:

I am writing to follow-up on the hearing yesterday in the above-referenced matter regarding the applications (the "Applications") to retain professionals for the Independent Advisory Committee ("IAC"). On behalf of the Committee, we propose to meet and confer with you and counsel for the Debtor to discuss the IAC Applications and the role of the IAC early next week.

In order to have a productive meet and confer, please provide a copy of the "report" that you referenced yesterday during the hearing with respect to the causes of action investigated by the IAC by close of business tomorrow.

I look forward to hearing from you.

Very truly yours,



Peter Feldman, Esq.  
November 19, 2020  
Page 2

cc: Corinne Ball (via email)  
Todd Geremia (via email)  
Christopher J. DiPompeo (via email)  
Benjamin Rosenblum (via email)  
Andrew M. Butler (via email)  
Jennifer S. Feeney (via email)  
Ilan D. Scharf (via email)  
Karen B. Dine (via email)

## **EXHIBIT D**

## Sophia Lee

---

**From:** Peter Feldman <pfeldman@otterbourg.com>  
**Sent:** Friday, November 20, 2020 11:26 AM  
**To:** Sophia Lee  
**Cc:** James Stang; 'abutler@jonesday.com'; 'epstephens@jonesday.com';  
'cball@jonesday.com'; 'trgeremia@jonesday.com'; 'brosenblum@jonesday.com';  
'cdipompeo@jonesday.com'; Jennifer S. Feeney; Ilan D. Scharf; Karen B. Dine  
**Subject:** RE: In re The Roman Catholic Diocese of Rockville Centre, USBC Case No. 20-12345

Jim:

I am in receipt of your letter dated November 19, 2020 requesting the production of the IAC's report that I mentioned during the November 18, 2020 hearing before Judge Chapman on the Diocese's applications to retain Otterbourg and Goldin (the "Applications"). As you know (see UCC's objection to the Applications at ¶11), the IAC is subject to a confidentiality agreement. Specifically, the IAC is required to maintain the confidentiality of information about the Diocese that the Diocese considers to be confidential. It is the IAC's understanding that the report contains such confidential information. Additionally, the report contains information that is subject to one or more privileges.

In view of the foregoing, we are unable to produce the report to you by close of business today, the time frame for the production set forth in your letter. We suggest that you seek the production directly from the Diocese.

I am available to discuss your request but as any resolution must also involve the Diocese, I suggest that the production of the report be one of the items for the proposed meet and confer between the Diocese and the UCC. However, please contact me if you want to speak directly (917-306-4449). Thank you.

Regards,  
Peter Feldman



---

**Peter Feldman** • Otterbourg P.C. • 230 Park Avenue • New York, NY 10169 • Direct: (212) 905-3615 • Cell: (917) 306-4449  
• Fax: (212) 682-6104 • [pfeldman@otterbourg.com](mailto:pfeldman@otterbourg.com) • [otterbourg.com](http://otterbourg.com)

---

The information contained in this communication may be privileged and/or confidential and is intended only for the individual to whom it is addressed or agent responsible to deliver it to the intended recipient. If you have received this communication in error, please immediately notify us by telephone.

---

**From:** Sophia Lee [<mailto:slee@pszilaw.com>]  
**Sent:** Thursday, November 19, 2020 12:55 PM  
**To:** Peter Feldman <[pfeldman@otterbourg.com](mailto:pfeldman@otterbourg.com)>  
**Cc:** James Stang <[jstang@pszilaw.com](mailto:jstang@pszilaw.com)>; 'abutler@jonesday.com' <[abutler@jonesday.com](mailto:abutler@jonesday.com)>;  
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Scharf <[ischarf@pszjlaw.com](mailto:ischarf@pszjlaw.com)>; Karen B. Dine <[kdine@pszjlaw.com](mailto:kdine@pszjlaw.com)>

**Subject:** In re The Roman Catholic Diocese of Rockville Centre, USBC Case No. 20-12345

Attached please find correspondence from James I. Stang in the above-referenced case.

Thank you.

**Sophia Lee**

Legal Secretary to James I. Stang  
Pachulski Stang Ziehl & Jones LLP  
Direct Dial: 310.203.4276  
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# **EXHIBIT E**



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James I. Stang

November 23, 2020

310.772.2354  
[jstang@pszjlaw.com](mailto:jstang@pszjlaw.com)

**Via E-mail (cball@jonesday.com)**

Corinne Ball, Esq.  
Jones Day  
250 Vesey Street  
New York, NY 10281

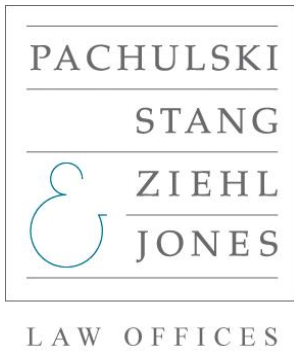
**Re: In re: The Roman Catholic Diocese of Rockville  
Centre, New York Case No. 20-12345**

Dear Corinne:

I am writing to follow-up on the November 18, 2020 hearing in the above-referenced matter regarding the applications (the "Applications") to retain professionals for the Independent Advisory Committee ("IAC") and our letter dated November 19, 2019 to Mr. Feldman regarding the same. On November 20, 2020, Mr. Feldman responded to our request for a meet and confer with him and you by deferring the matter to the Debtor.

On behalf of the Committee, we therefore request a meet and confer with you to discuss the IAC Applications and the role of the IAC early this week.

In order to have a productive meet and confer, please provide a copy of the report that Mr. Feldman referenced at the November 18 hearing with respect to the causes of action investigated by the IAC by close of business tomorrow. Please also provide copies of all confidentiality agreements and/or non-disclosure agreements between the Debtor and the IAC.



Corinne Ball, Esq.  
November 23, 2020  
Page 2

I look forward to hearing from you.

Very truly yours,

*James I. Stang*

James I. Stang

JIS

cc: Todd Geremia (via email)  
Christopher J. DiPompeo (via email)  
Benjamin Rosenblum (via email)  
Andrew M. Butler (via email)  
Peter Feldman (via email)  
Jennifer S. Feeney (via email)  
Ilan D. Scharf (via email)  
Karen B. Dine (via email)